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THE

SOLICITORS' JOURNAL

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CURRENT TOPICS

Advocates or Experts?

MR. S. L. G. BEAUFOY, Chief Housing and Planning Inspector to the Ministry of Housing and Local Government, recently raised the question whether a planning officer who disagrees with a refusal should give his own views to the inspector at the inquiry or merely be the mouthpiece for the council's views. Most, if not all, planning officers hold professional qualifications and if they are called to give evidence we cannot see how they can properly put forward views which they do not hold. If a council or committee decide contrary to the planning officer's advice, it seems to us wrong that he should be called in to support that decision as an expert. It may be otherwise if the planning officer is conducting the council's case and appearing as an advocate who is not expected necessarily to believe in the justice of his client's case. If a council are deserted by their experts, this is something which the public ought to know and a council unsupported by expert evidence should appoint a member of the council as spokesman. It may well turn out that the councillors are right and the experts wrong.

Publicity for Solicitors

ON the very day that we published a topic under the above heading, on 29th April (p. 335), copies of the May issue of the *Reader's Digest* were appearing on the bookstalls. The connection between these two facts is that the inside cover of the digest carries a photograph of and message from the PRESIDENT of The Law Society appearing over the facsimile signature of Sir Sydney Littlewood and the crest of The Law Society. In his message the President endeavours to "sell" the profession to the public. It is pleasant to reflect that his message will reach a large proportion of the public, for the circulation of the British edition of the *Reader's Digest* is over 1m. with an estimated readership of 8m. Let us hope that this is the start of a large-scale publicity campaign to be run by The Law Society. It is an excellent beginning but if headway is to be made there must be continuous publicity over a long period.

Take-over Bids

THE Prevention of Fraud (Investments) Act, 1958, which consolidated the 1939 Act, prohibits dealing in securities unless the dealer has been licensed by the Board of Trade or is authorised in one of the other ways prescribed by the Act. Under the Act the Board of Trade may make rules

governing the conduct of licensed dealers. The existing rules (which were made in 1939) cover their conduct only in relation to offers to dispose of securities and not to offers to acquire them, or to their conduct in connection with take-over bids. The Board of Trade have decided to issue new rules, the main effect of which will be to extend the present rules to cover offers to acquire securities and particularly take-over bids. The draft of the Licensed Dealers (Conduct of Business) Rules, 1960, was published last Monday so that, as required by the Act, any comments received may be taken into consideration by the Board of Trade before the rules are put into final form to be laid before Parliament. The draft rules and Scheds. I and II prescribe requirements, particularly as regards information, in connection with the day-to-day sale and purchase of securities, together with additional requirements which must be satisfied in relation to a take-over bid. Schedule III sets out the requirements which must be satisfied when a dealer circularises a recommendation by the board of an offeree company that an offer should be accepted. The draft also repeats the existing provisions about the particulars which must be given in the contract notes issued by licensed dealers and about the books, accounts and documents which they must keep. The Board of Trade expect the principles underlying the information prescribed in regard to take-over bids to be observed by all persons whose business involves dealing in securities, and not only by licensed dealers. Objections and representations with respect to the draft rules may be made in writing to the Assistant Secretary, Companies Department, Board of Trade, Horse Guards Avenue, London, S.W.1, not later than 8th June, 1960.

Sudden Illness while Driving

In general, proof of the fact that the driver of a motor vehicle was overcome by a sudden illness will provide a sufficient answer to a charge of dangerous or careless driving, but cases in which this defence is raised successfully are few and far between. The defence was recognised by Humphreys, J., in *Kay* v. *Butterworth* (1945), 61 T.L.R. 452, where his lordship said that "he did not mean to say that a person should be made liable at criminal law who through no fault of his own became unconscious while driving; for example, if he were struck by a stone or overcome by a sudden illness; or the car was temporarily out of control by his being attacked by a swarm of bees." This dictum was approved by Lord Goddard, C.J., in the important case of *Hill* v. *Baxter* [1958] 1 Q.B. 277, where his lordship agreed that there may be cases where the circumstances are such that the accused could not really be said to be driving at all. His lordship continued: "Suppose he had a stroke or an epileptic fit, both instances of what may properly be called acts of God; he might well be in the driver's seat even with his hands on the wheel, but in such a state of unconsciousness that he could not be said to be driving." However, in *Kay* v. *Butterworth*, *supra*, where a driver allowed himself to be overtaken by sleep, and *Hill* v. *Baxter*, *supra*, where the defendant failed to prove an extraordinary mischance which made it impossible for him to control the car and direct its movements, convictions of careless and dangerous driving respectively were upheld, but in a recent case at Oxford the accused succeeded in showing that at the material time he was in an automatous state. It was said that while the defendant was driving up the High Street his car swerved from side to side and collided with two cars, a bus and a police motor-cyclist. The vehicle then went round the wrong side of a refuge, knocked down a pedestrian and finally came to rest against a traffic signal after completely wrecking the control box for the lights. A doctor who examined the accused after the accident agreed that the circumstances could have been consistent with an attack of *petit mal*, a form of epilepsy, and there was further medical evidence that the defendant suffered from epilepsy and that the accidents occurred during a major attack. In view of these statements, the charge of dangerous driving was dismissed.

Obstruction: A Suggestion

Most motorists when charged with obstruction in respect of the parking of their vehicle prefer to plead guilty, but Lady Bridges is not the first person to plead not guilty to a parking summons and have the satisfaction of hearing the charge dismissed. However, this case is particularly noteworthy because the chairman of the Epsom magistrates said that the court were "very glad" that Lady Bridges fought the case because they were disturbed by the charges of unnecessary obstruction brought before them. He added: "It is high time the authorities made up their minds where people can and cannot park," and he expressed the hope that in future they would not be confronted with so many of these cases. There can be no doubt that the law as it stands causes difficulties for both police and motorists alike and we would repeat our suggestion that in streets where parked vehicles are regarded as obstructions, and there are no other signs restricting or prohibiting parking, a yellow strip one yard in length should be painted on the kerbstone every five or so yards. The cost of implementing this proposal would not be very great and it would enable all concerned to know where they stand—or where they can park.

Shop Not a "Public Place"

The expression "public place" appears in so many statutory provisions that any judicial interpretation of it is worthy of note. An Australian statute, the Registration of Dogs Act, 1924–1957, stipulates that "if any dog, in or upon any street, thoroughfare, highway, or public place . . . or in any premises other than the premises of or occupied by the owner of the dog" rushes at or attacks any person, the owner of the dog shall be liable to a penalty. In *Rosey* v. *Nilson* [1959] S.A.S.R. 54, the question arose as to whether the defendant's sheepdog, which had attacked a small boy in the public portion of a shop, had done so in a "public place." A magistrate held that the words "public place" should be construed *ejusdem generis* with the words "any street, thoroughfare, highway" and dismissed the complaint, and the Supreme Court of South Australia did not dissent from this view. It is interesting to compare this case with *Brannan* v. *Peek* [1948] 1 K.B. 68, where it was held that for the purposes of s. 1 of the Street Betting Act, 1906, a public house, which was not shown to be a common inn, was not a "public place" as members of the public had no right of entry to it. It would seem that the same could be said of a shop, but, of course, the meaning of the expression "public place" is governed to a large extent by the context in which it is found.

ONUS OF PROOF IN TAX APPEALS

In *R.* v. *Special Commissioners of Income Tax; ex parte Elmhirst* [1936] 1 K.B. 487, Lord Hewart, C.J., said that an appeal under the Income Tax Acts is not like an appeal in a private law suit because the taxpayer, having appealed, is not *dominus litis*. The assessment against which he is appealing for reduction may not only be reduced; it may be increased against him, and therefore it is not in his power to withdraw his appeal (but see below) because he does not like the look of it. The function of Commissioners hearing an appeal is to make an estimate of the profits of the taxpayer which is fair both to him and to the general body of taxpayers—"the hidden parties to the appeal." Before they allow an appeal and reduce an assessment the Commissioners have to be satisfied by lawful evidence that the taxpayer has been overcharged, and if on the evidence the Commissioners consider that the assessment is inadequate, they are under a duty to increase the assessment to the proper figure. As appears from the case of *Inland Revenue Commissioners* v. *Sneath* [1932] 2 K.B. 362, no *lis* comes into existence until there has been a final estimate of the income which determines the tax payable and this estimate is thereafter questioned by litigation.

Having regard to the terms of the Income Tax Act, 1952, s. 52 (5), it is plain that an assessment stands unless and until the taxpayer satisfies the court that it is wrong. In *T. Haythornthwaite & Sons, Ltd.* v. *Kelly* (*Inspector of Taxes*) (1927), 11 T.C. 657, the Court of Appeal held that the onus lay on the taxpayers to satisfy the Commissioners upon sufficient evidence that the assessments made on them were erroneous, and that as such evidence was not produced the Commissioners had proceeded correctly in confirming the assessments. Similarly, in *Moll* v. *Inland Revenue Commissioners* (1955), 36 T.C. 384, the First Division of the Court of Session held that in the absence of evidence that the assessments in question were excessive, they should be confirmed in terms of s. 52 (5). The onus referred to is not merely the narrow one of opening the case and calling evidence in support; the burden rests "fairly and squarely" upon the taxpayer to show that the assessment should be discharged or reduced.

In *Robins* v. *National Trust Co.* [1927] A.C. 515, at p. 520, Lord Dunedin made some observations regarding the nature of onus, in the course of which he said, as is well known, that in certain circumstances the onus shifts. If an additional assessment is raised against a taxpayer in respect of a source of income concerning which the taxpayer has no, or no complete, records, it will be difficult indeed for him to prove sufficiently that the assessment is wrong; and the point may be taken that, the taxpayer having produced prima facie evidence in support of his contention, e.g., that his capital gains are the result of betting wins, the onus of proof shifts to the Crown to disprove that contention. Such contentions, however, are usually unsuccessful (see *Moschi* v. *Inland Revenue Commissioners* (1952), 33 T.C. 449, and *Roberts* v. *McGregor* (*Inspector of Taxes*) (1959), 52 R. & I.T. 809.

Onus on Crown

In some types of appeal, on the other hand, there is a preliminary onus on the Revenue to establish a prima facie case. This is so, firstly, where assessments to income tax, surtax or profits tax are made outside the statutory time limits on the ground of fraud or wilful default (Income Tax Act, 1952, ss. 47 (1), proviso, and 229 (3); Finance Act, 1958, s. 27 (1) (*a*)) and the taxpayer denies the allegation and calls on the Crown to justify the making of the assessments. But if the taxpayer is found under the relevant section to have been guilty of fraud or wilful default, the onus of successfully challenging the assessments falls on him (*Barney* v. *Pybus* (*Inspector of Taxes*) (1957), 37 T.C. 106). If there are some assessments which were made in time as well as some which were made out of time, and the Crown establishes a prima facie case in respect of the assessments which were made out of time, it may be decided, as a matter of convenience, if the facts are similar, that the Crown shall open the appeals for the other years of assessment. If, at the conclusion of the Crown's opening, the Commissioners are of opinion that the Crown has not established a prima facie case for the taxpayer to answer they may decide not to call him, in which event the out-of-date assessments will be discharged, as they will also be if the Commissioners, after hearing the taxpayer in reply, decide that the taxpayer has not been guilty of fraud or wilful default.

The second type of appeal where the Crown must establish at least a prima facie case is where an appeal is made against a surtax direction under s. 247 of the 1952 Act. In *Thomas Fattorini* (*Lancashire*), *Ltd.* v. *Inland Revenue Commissioners* [1942] A.C. 643, it was decided in the House of Lords that upon the conclusion of all the evidence the burden is upon the Crown to establish that the company unreasonably withheld its income from distribution in the years in question. The burden does not lie upon the company to prove that the surtax direction is not justified. In *Fattorini's* case, however, the House of Lords did not consider the narrow question of the onus of proof in the sense of the right and duty to begin, but in *Inland Revenue Commissioners* v. *Transport Economy, Ltd.* (1955), 35 T.C. 601, Upjohn, J., held that the right and duty to begin, not being altered by statute, must, on general principles, rest upon the Crown, though there might be many cases where it would be more convenient for the company to open its case and call evidence and then for the Crown to do so. Where both the company and the Crown thought that was so, there was nothing in his judgment to be taken as rendering such a course improper.

In the later case of *Inland Revenue Commissioners* v. *White Bros., Ltd.* (*in liquidation*) (1956), 36 T.C. 587, Upjohn, J., held, in an appeal against a surtax direction, (i) that the onus on the Crown was to prove an unreasonable withholding, not beyond a reasonable doubt, but on a balance of probabilities, and (ii) that a submission that a company has no case to answer may not be entertained by the Commissioners unless the company elects to call no evidence. The reason for this second finding was that stated by the Court of Appeal in *Alexander* v. *Rayson* [1936] 1 K.B. 169, at p. 178, viz., that where there is no jury, such a practice is highly inconvenient, for the judge in such cases is also the judge of fact, and it cannot be right that the judge of fact shall be asked to express an opinion upon the evidence until the evidence is completed.

Thirdly, the procedure applicable in an appeal against a surtax direction also applies to appeals against profits tax directions made under s. 32 of the Finance Act, 1951, except that, if the transaction falls within subs. (3), there is a presumption against the taxpayer.

Appeals by way of case stated

Section 50 (2) of the 1952 Act provides that an appeal, once determined by the Commissioners, is to be final and that no assessment made or confirmed by the Commissioners is to be altered except by order of the court. But the determination of an appeal does not prevent an additional assessment being made, though, to justify the making of an additional assessment, the inspector of taxes must "discover" under s. 41 of the Act that some income or profits chargeable to tax have been omitted from the first assessment. Under s. 64 of the Act a case may be stated for the opinion of the court on a question of law, and there are many dicta in the reported decisions as to what is a question of law, and the form in which the facts, and the Commissioners' conclusions from those facts, should be set out in the case. A determination of the Commissioners on a question of pure fact is final and the function of the High Court is limited to deciding the question of law necessary for the proper determination of the appeal; but the court is not restricted to the question of law set out in the case stated (see *Inland Revenue Commissioners* v. *Bew Estates, Ltd.* [1950] Ch. 407, where, by leave, the Crown advanced a new contention in the High Court).

In *Bracegirdle* v. *Oxley*; *Bracegirdle* v. *Cobley* [1947] 1 K.B. 358, Denning, J., said:—

> "The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts."

This distinction between primary facts and the conclusions from those facts was also implicit in the decision of the House of Lords in *Edwards* (*Inspector of Taxes*) v. *Bairstow and Harrison* [1956] A.C. 14, where Viscount Simonds said that an inference (e.g., whether an adventure in the nature of trade was carried on), though regarded as a mere inference of fact, might yet be challenged as a matter of law on the ground either that the Commissioners had made a wrong inference of fact because they had misdirected themselves in law, or, more shortly, because they had made a wrong inference of law. Accordingly, conclusions of the Commissioners based on the primary facts can be reviewed by the court either if there was no evidence which supports those conclusions (see dictum of Croom-Johnson, J., in *Gray* v. *Holmes* (*Inspector of Taxes*) (1949), 30 T.C. 467, at p. 475, that no tribunal can draw an inference which is contrary to the evidence in the case which that tribunal accepts) or if the Commissioners have misdirected themselves in law.

The importance of establishing to the satisfaction of the Commissioners the primary facts upon which the taxpayer relies so that they will appear in the case stated (should one be demanded) is thus plain; and failure so to establish an essential fact will normally be an incurable defect which cannot be rectified before the court, since only in exceptional circumstances will the court remit a case to the Commissioners for further facts to be found, and then, usually, only for a finding of a secondary or inferential fact and not a primary fact (*Bird & Co.* v. *Inland Revenue Commissioners* (1924), 12 T.C. 785; *Timbrell* v. *Lord Aldenham's Executors* (1947), 28 T.C. 293). On the other hand, provided the facts are established, failure to put forward a contention of law before the Commissioners will not prevent a party from advancing such contention in the High Court, which will take cognisance of any question of law arising on the case.

Withdrawals and adjournments

On the hearing of an appeal before the Commissioners, a taxpayer may be permitted to raise another ground of appeal if its omission from the notice of appeal was, in the opinion of the appeal Commissioners, not wilful or unreasonable. In practice, a taxpayer is usually allowed to withdraw an appeal (see also *Hood Barrs* v. *Inland Revenue Commissioners* (1959), 52 R. & I.T. 359). An adjournment may be a more difficult matter, since the Commissioners are entitled to come to a decision on the evidence produced to them at the hearing and are not under any obligation to grant an adjournment in order that the taxpayer may produce further evidence or call witnesses (*Kilburn* v. *Bedford* (*Inspector of Taxes*) (1955), 36 T.C. 262). They may also proceed to a determination if the taxpayer does not appear or is not represented, even if an adjournment has been requested (*Noble* (*Inspector of Taxes*) v. *Wilkinson* (1958), 38 T.C. 135).

This article relates, mainly, to appeals made to the General or Special Commissioners against Sched. D assessments; there may also be appeals to the Board of Referees and the Lands Tribunal in special cases.

K. B. E.

"THE SOLICITORS' JOURNAL," 12th MAY, 1860

On the 12th May, 1860, THE SOLICITORS' JOURNAL reported an exercise of the Inns of Court Volunteer Rifles when they paraded "in front of King's Bench Walk in review order at a quarter past twelve p.m. under the command of the gallant colonel of the regiment, Colonel Brewster. At half-past twelve o'clock about 300 men had mustered, and . . . formed four deep and marched . . . to Waterloo Station. Some little delay here occurred in obtaining adequate accommodation in railway carriages and each gentleman, having paid first-class fare, was at length accommodated with a seat in the lowest, narrowest and worst constructed second-class carriages on any railway in England . . . However, the Devil's Own . . . made the best of this slight matter, and were in due time delivered safely at Mortlake Station, where the band of a militia regiment was stationed to receive them. The several companies were then formed and marched four deep to the butt on Sheen Common where . . . each gentleman produced such slight refreshment as he had been able to stow away in his cartridge pouch . . . The several companies were again formed, and marched four deep to Richmond Park, where, notwithstanding the threatening aspect of the weather, a good many ladies and gentlemen on horseback, on foot and in carriages were assembled . . .: The regiment here was formed into line, wheeled by sub-divisions, extended in skirmishing order, run in on the supports, formed square and put through every military manœuvre by Colonel Brewster, Mr. E. L. Pemberton of the Chancery Bar . . . acting as his aide-de-camp on horseback . . . After advancing in skirmishing order on a crowd of ladies, somewhat to their alarm, the order was passed to run in and form square against cavalry. After this the companies were again formed four deep and marched through the park. The regiment then marched through Richmond, preceded by the band, . . . to the railway station."

LEGAL AID REFRESHER—I

WE have the impression, which may well be without foundation, that the more recent extensions of legal aid and amendments of the scheme have left a certain amount of confusion in the offices of some solicitors. The unheralded arrival of a client clutching a bundle of correspondence and announcing that he or she is nearly or entirely without means has been known to precipitate a search for "those forms we had from The Law Society"—a search which is sometimes unsuccessful. It may therefore be useful to recapitulate the various types of legal aid which have been available since Monday, 28th March last, in the offices of those solicitors who have put their names down for everything, together with the financial qualifications for receiving them.

Let us assume that there arrives in our office a widow with two dependent children who is entirely dependent on her pension and earnings of £9 per week and one family allowance and who has only £125 in the Post Office Savings Bank. Three months ago while riding a bicycle she was injured in a collision with a motor car and was away from work for three weeks, when she endured pain and suffering from which she has happily recovered. With the help of her brother-in-law, who is a bank clerk, she has been conducting a frustrating correspondence with one of the less malleable insurance companies, who have firmly repudiated liability because they have a signed statement from an independent witness to the effect that she swerved into the car. In short, a situation which, though uncommon in offices in the centres of large cities which are approached through highly polished doors, is familiar to the more humble practitioners in the suburbs and smaller towns.

Our client—let us in spite of everything call her Mrs. Jones—having an income of only £9 a week and two children (representing a deduction of £1 7s. per week each) is apparently entitled to legal advice under the statutory scheme because her total income, after deducting £2 14s. for the children, does not exceed £7 10s. and her capital does not exceed £125. She should therefore be invited to fill up one of the new statutory forms, which are printed on pink paper setting out her total capital and income, the names of her children and a brief statement of the matter on which she wishes to be advised. When she has done this and has signed the declaration at the end she is required to pay 2s. 6d. She then produces her bundle of letters and we advise her whether or not she has a case worth taking further. If the interview threatens to continue for more than one and a half hours it should be adjourned to enable us to obtain the authority of the area committee to incur a fee exceeding £3 inclusive of the applicant's 2s. 6d. Subject to this we at the end of the interview complete p. 4 of the form and send it to the area committee and in due course we are paid at the rate of £1 per half-hour less the applicant's 2s. 6d. If the applicant had a dependent spouse or other person dependent there is an additional deduction of £2 5s. to be made from the total income. So a man with a non-working wife and two children is entitled to advice for 2s. 6d. if weekly income does not exceed £12 9s. and his capital does not exceed £125.

If Mrs. Jones were on national assistance the procedure would be the same except that she would answer "Yes" to the question, "Are you in receipt of national assistance?" and she would not have to pay 2s. 6d. If Mrs. Jones had more than £125 in savings and capital apart from her dwelling-house and furniture, wearing apparel and tools of trade or had more than £7 10s. after making the deductions for her children, she would not be eligible for advice under the statutory scheme. Instead, she would be handed a copy of the leaflet explaining the voluntary legal aid scheme and would receive advice in an interview not exceeding half an hour for £1 which she would pay herself. If the interview threatened to exceed half an hour any additional payment would be a matter of arrangement between her and us.

Whichever category Mrs. Jones is in, let us assume we advise her that her case is strong enough to be pressed, even though it will probably have to be compromised, but it is clear that she cannot afford to pay any costs. We ask her to complete one of the new (blue) application forms which are designed to cover both negotiations and proceedings and differ in many important ways from the old forms. We shall devote our next article to considering them and the conditions under which Mrs. Jones may have legal aid to cover the cost of our negotiations as well as proceedings if these become necessary. *(To be continued)*

P. A. J.

SAVINGS BANKS DEPOSITS: LIMITS

The Savings Banks (Deposits) (Limits) Order, 1960 (S.I. 1960 No. 779), which came into operation on 2nd May, 1960, consolidates, with amendments, the Savings Banks (Limits of Deposits) Order, 1946, and the Savings Banks (Limits of Deposits) (Amendment) Order, 1952. It applies to accounts and deposits in the Post Office Savings Bank and in the Ordinary Department of a Trustee Savings Bank and its main purposes are: (*a*) to increase from £3,000 to £5,000 the limit on the aggregate amount standing to the credit of a savings bank account; (*b*) to suspend the limit on the amount which may be deposited in or credited to a savings bank account in any savings bank year (the present limit is £500 subject to the proviso that a depositor may, not more than once in the same savings bank year, deposit money to replace money previously withdrawn in one entire sum during that year); (*c*) to define, with some modifications, the conditions under which the limit shall not prevent the making of certain classes of deposit; (*d*) to define certain kinds of deposit which are ignored in computing the amount of the account for the purposes of the limit; and (*e*) to define the terms and conditions under which the limit may be waived in favour of certain classes of depositor.

LAW SOCIETY'S INTERMEDIATE EXAMINATION

In The Law Society's Intermediate Examination (Law Portion) held in March, 172 of the 284 candidates passed, the following candidates being placed in the First Class: Mr. Jonathan Crawford Brunker, Mr. Nicholas Steward Hassall, B.A. (Oxon), and Mr. Richard Everard Nichols. In the Trust Accounts and Book-keeping Portion, 311 of the 578 candidates were successful. The Council of The Law Society awarded the Herbert Ruse Prize, value £11, to Mr. Howard Leonard Burgess, LL.B. (Bristol).

SOLICITORS AMALGAMATE

As from 1st May last Messrs. Norton, Rose & Co., of 116 Old Broad Street, London, E.C.2, and Messrs. Botterell & Roche, of Baltic Exchange Chambers, 24 St. Mary Axe, London, E.C.3, have amalgamated their practices. The combined practice is now being carried on under the style of Norton, Rose, Botterell & Roche at Kempson House, Camomile Street, Bishopsgate, London, E.C.3 (Telephone: AVEnue 2434). All the present partners in both firms have become partners in the new firm.

THE PAWNBROKERS ACT, 1960

WHEN Mr. Graham Page moved the Second Reading of the Pawnbrokers Bill, which received the Royal Assent last month, he said: "I am not asking the House to legislate to preserve a business which is dying a natural death. I am asking the House to legislate to preserve a business which is dying from statutory strangulation, through being tied to the charges which were fixed ninety years ago." Mr. Page believed that the "statutory strangulation" of the pawnbroker, whose services the public still required, had led to an increase in the number of "pub-door" and "factory-gate" moneylenders who charged an exorbitant rate of interest, and the main purpose of his Bill was to enable pawnbrokers to make "very modest" increases in their charges.

Increase in permitted charges

The Pawnbrokers Act, 1960, comes into force today (13th May) and s. 4 of that Act brings about the "very modest" increase in the charges allowed to a pawnbroker for the matters referred to in the Schedule to that Act. Before today, these charges were fixed by Sched. IV to the Pawnbrokers Act, 1872, and s. 1 of the Pawnbrokers Act, 1922, but the 1922 Act has now been repealed (s. 6 (3) (*b*) of the 1960 Act) and Pts. II to IV of Sched. IV to the 1872 Act have been amended as follows:—

(i) The permitted charge for a pawnticket is now 2d. Under the 1872 Act this charge was ½d. where the amount of the loan was 10s. or less, and 1d. where the loan was above 10s. but not over £2.

(ii) Where the loan is £5 or under, the pawnbroker may charge a valuation fee on receipt of the pledge of 2d. on each 5s. or part of 5s. lent. This charge, which was introduced by the Pawnbrokers Act, 1922, was formerly ½d.

(iii) The charge for the inspection of the entry of a sale in the sale book (see s. 21 of the 1872 Act) is now 6d. instead of 1d., the fee fixed by the 1872 Act.

(iv) The permitted charge for a form of declaration (see s. 29 of the 1872 Act) is now 6d., which sum is to be paid by the applicant at the time of making his application. The 1872 Act provided for a charge of ½d. or 1d., according to the amount of the loan.

It will be seen, therefore, that until today the cost to the borrower of borrowing £1 from a pawnbroker for one month was 8d. but this figure has now been raised to 1s. 3d. In such a case the pawnbroker's permitted profit, which must be distinguished from his charges, of ½d. per month or fraction of a month for every 2s. or fraction of 2s. lent (Pt. I of Sched. IV to the 1872 Act) has not been affected by the 1960 Act.

Scope of 1872 Act extended

However, s. 1 of the 1960 Act has extended the scope of the 1872 Act by amending s. 10 of that Act by substituting for the words "forty shillings" and "ten pounds" respectively the words "five pounds" and "fifty pounds." Thus the Pawnbrokers Acts, 1872 and 1960, now apply—

(i) to every loan by a pawnbroker of £5 or under: such a loan is of necessity wholly subject to the provisions of those Acts; and

(ii) to every loan by a pawnbroker of above £5 and not above £50 with the exception of those cases where, in accordance with the provisions of s. 24 of the 1872 Act, a special contract respecting the terms of the loan is made between the pawner and the pawnbroker at the time of the pawning.

Loans of over £50 are governed by the Moneylenders Acts, 1900 and 1927.

The words "five pounds" and "fifty pounds" respectively are also substituted for the words "forty shillings" and "ten pounds" in s. 6 of the 1872 Act (which, to prevent evasion, applies the Act to certain other transactions), s. 24 (which enables a pawnbroker to make a special contract: see above) and Pt. I of Sched. IV to that Act (which regulates the profit allowed to a pawnbroker, and distinguishes between loans of 40s. or under and loans of above 40s.). It follows, therefore, that s. 6 of the 1872 Act now applies where, in the circumstances envisaged by that section, a shopkeeper pays or advances or lends any sum of money not exceeding £50; that the pawnbroker and the borrower may contract out of many of the provisions of the 1872 Act only in the case of loans of more than £5 (ibid., s. 24); and that the profit of ½d. per month or fraction of a month for every 2s. or fraction of 2s. lent is allowed in respect of a loan of £5 or under. Above this figure the permitted profit is ½d. for every 2s. 6d.

Period for redemption reduced

If the main purpose of the Pawnbrokers Act, 1960, was to enable pawnbrokers to increase their charges, it has also made several other important amendments to this branch of the law, apart from extending the application of the 1872 Act as indicated above. Section 16 of the 1872 Act stipulated that:—

> "Every pledge shall be redeemable within twelve months from the day of the pawning, exclusive of that day; and there shall be added to that year of redemption seven days of grace, within which every pledge (if not redeemed within the year of redemption) shall continue to be redeemable."

The practical effect of this provision was that a pawnbroker was required "to hold a pledge for twelve months and seven days" (per Atkinson, J., in *Jay's (Jewellers), Ltd.* v. *Inland Revenue Commissioners* [1947] 2 All E.R. 762), but s. 2 of the 1960 Act has reduced the period of twelve months to one of six months.

The same amendment has also been made in ss. 17 and 18 of the 1872 Act and these sections have been further amended by s. 3 of the 1960 Act, which has substituted for the words "ten shillings" the words "forty shillings." Thus, as from today, a pledge pawned for 40s., or under, if not redeemed within six months and the days of grace, shall at the end of the days of grace become and be the pawnbroker's absolute property (s. 17 of the 1872 Act), and a pledge pawned for above 40s. shall further continue redeemable until it is disposed of in accordance with the provisions of the 1872 Act, although the six months' redemption period and the days of grace are expired (ibid., s. 18). Provisions relating to the sale of pledges for above 10s. are to be found in ss. 19, 21, 22 and 23 of the 1872 Act and in each case for the words "ten shillings" should now be read "forty shillings" (s. 3 of the 1960 Act). For example, s. 21 now provides that at any time within three years after the auction at which a pledge pawned for above 40s. is sold, the holder of the pawnticket may inspect the entry of the sale in the pawnbroker's book, and in the filled-up catalogue of the auction, or in either of them.

Declaration as to identity

As a general rule, a pawnbroker is not bound to deliver back a pledge unless the pawnticket for it is delivered to him (s. 26 of the 1872 Act), but where a person claims to be the owner of a pledge or to be entitled to hold a pawnticket, and is unable to produce the pawnticket, he is afforded some measure of protection by s. 29 of the 1872 Act. Under that section he must apply to the pawnbroker for a printed form of declaration (see Sched. III to the 1872 Act, Forms IV and V) and if the applicant delivers back to the pawnbroker the declaration duly made before a justice of the peace by the applicant, and by a person identifying him, the applicant shall thereupon have, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawnticket (ibid., s. 29 (2)). This procedure has assisted many people whose pawntickets have been lost, mislaid, destroyed, stolen or fraudulently obtained from them, but it has now been simplified by s. 5 of the 1960 Act, which provides that a declaration for the purposes of s. 29 of the 1872 Act is not required to include any declaration by another person identifying the claimant. This provision will mitigate the inconvenience caused by the loss of a pawnticket, but it does not apply if the form of declaration was applied for before today (s. 7 (2) of the 1960 Act).

Apart from the amendment to the form of declaration, where application for the form was made after the coming into force of the 1960 Act, nothing in that Act applies to loans made before today, or to the pledge on which the loan is made, or to any person as pawnbroker or pawner in relation to the loan or pledge (ibid., s. 7 (3)). It remains to be seen whether the Pawnbrokers Act, 1960, will bring about an increase of business for pawnbrokers, or whether it will actually accelerate the decline of this calling. Whatever the result, Parliament has done its best to meet the wishes of the pawnbrokers themselves and to ensure that they obtain a reasonable return on their business.

D. G. C.

LICENSING REVIEW AND REFORM

"MOST people would agree that the licensing system to-day is out of date with the thoughts and desires of society," was the comment of the mover of the motion in the Commons debate for a review of the licensing laws last January (*Hansard*, vol. 616, cols. 501 to 593). The speech of the Home Secretary showed that he had already started to explore the matter and was putting tentative proposals to the various interests concerned.

While it is questions on hours and clubs which make headlines, numerous more technical points may well have occurred to solicitors who are engaged at Brewster Sessions and before confirming and compensation committees each year as to practicable amendments to the jungle of 169 sections and ten Schedules which comprise the Licensing Act, 1953, alone. The abolition of the payment of monopoly value on new justices' licences by the Finance Act, 1959, of itself opens the way to some tidying up.

As to the more technical aspects, consider first the justices' powers in granting new licences. They are permitted to make a provisional grant for a building not yet constructed (Licensing Act, 1953, s. 10). This is a power which seems unnecessarily restricted to on-licences, but, more important, the application, in these days, is one which does not necessarily merely concern the building as such. In practice, there may be two separate though related factors requiring detailed consideration: (*a*) the site chosen, and, if that is agreed to, (*b*) the approval of the proposed building.

On the result of the application and, if successful, its confirmation, the signing or effectiveness of a contract of purchase may depend, but additional to this, for the application itself to be made, the services of an architect will have been required both in the preparation of detailed plans and in the evidence before the justices. What would seem to be required is a procedure akin to that under planning legislation whereby an outline permission could be granted, leaving the giving of full notices, final plans and the presentation of evidence as such to a subsequent hearing. This would be without prejudice to the ultimate powers of the confirming committee, and the construction of premises in accordance with plans approved.

With construction costs as high as they are to-day any revised section might conveniently be drawn to cover not only premises about to be constructed or in course of construction, but also alterations to existing premises which upon alteration would be suitable as a licensed house.

The outline application would be equally useful so far as removals are concerned (s. 24). Under the present law the provisional grant of removal to premises not yet completed is restricted to ordinary removals of on-licences, though there does not seem any substantial reason why amendment should not be made to allow provisional special removals nor the provisional removal of an off-licence.

Requisites for full on-licence

As to the nature of the premises requisite for a full on-licence, it is difficult to see what peculiar virtue now attaches to the provision requiring at least two rooms for the accommodation of the public (s. 32). As was said in the debate, our licensing laws were designed to deal with problems of which nothing but the faintest shadow remains. The requirement of the two rooms appears to be a relic of the earlier legislation of 1872 and 1910, and a policy of getting rid of one-room drinking dens where spirits were consumed. The section does not require that each of the two rooms should be licensed (*R.* v. *Middlesex County Confirming and Compensation Committee; ex parte Frost* [1956] 1 W.L.R. 995), otherwise innumerable railway refreshment rooms where alcoholic liquor is served would be operated under void licences: the second room in such instances is the waiting room.

The removal of this restriction, which does not apply to pre-1872 premises, might well render the development of some sites more satisfactory (particularly where it is not intended to serve substantial meals) by allowing one reasonable-sized bar rather than splitting the same space into two. It might well also facilitate the modernisation of some older houses. It is an instance where judicial discretion might, at the least, be allowed.

Preliminary to an application for a new licence being made, there are the requisite notices to be given (s. 5, Sched. III, Pt. I). In this day and age, it may well be doubted if the notice of proposed application affixed during specified hours near the door of the church or chapel of the parish in fact serves any useful purpose. If there is no such building an alternative has to be found but it is left open for the justices

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or confirming committee to consider whether such exhibition was adequate. The church or chapel is apparently one of the Church of England notwithstanding the Act's application to Wales. It would seem better that there should be increased advertisement in the local Press as the required addition to the exhibition of notices on the premises.

As to renewals (s. 11) and similar matters (bearing in mind the direct and indirect effects of the abolition of monopoly value for the future), it may be doubted if there is any reason why it ought not to be made possible for a term licence to be converted into an annual licence during the period of the term. A strong case can also be made out that on renewal, where a six-day licence (s. 109) or an early-closing licence (s. 110) operates, the justices should have a discretion to remove the restriction (imposed originally at the wish of the person applying for the licence) at the request of the renewer. This is not now possible. The ingenious argument of Mr. Paterson in front of the Court of Appeal that a six-day licence was in reality a seven-day licence subject to the condition that the premises should not be opened on Sundays was rejected (*R.* v. *Crewkerne JJ.* (1888), 21 Q.B.D. 85). The only course open is application for a new full on-licence; in other words, the current licence is to be surrendered and a new licence granted in its place (*R.* v. *Godalming Licensing Committee; ex parte Knight* [1955] 1 W.L.R. 600; *Carter* v. *Pickering* [1949] 1 All E.R. 340). Where justices have themselves attached conditions under s. 6 (2), they might well be given discretion to remove them.

Structural adequacy plays an important part at the present day and instances are inevitably encountered where, for example, space does not allow the provision of lavatory accommodation up to modern standards. With this type of example in mind, it is difficult to see why the justices should not have a discretion to renew, on application being made and with the owner of the premises consenting, as an off-licence. This apparently cannot now be done since it is not a "similar licence" under s. 11.

Confirming and compensation committee

Turning briefly to the confirming and compensation committee, *R.* v. *Cheshire Licensing JJ.; ex parte Kay's Atlas Brewery, Ltd.* [1906] 1 K.B. 362, showed that a member of the committee is not disqualified from taking part at the principal meeting in hearing cases referred from his own division on the ground that he was a member of the renewal authority and took part in their decision. That in itself does not establish bias (whatever the holder of the licence may think), but (as was said in the case next referred to) "Lord Alverstone found great difficulty in deciding this case, and did not appear to be quite satisfied that the conclusion to which he came was right." A limitation on this appears in *Frome United Breweries Co., Ltd.* v. *Bath JJ.* [1926] A.C. 586; members of a renewal authority who are also members of the compensation authority, and who instruct a solicitor to appear before the latter to oppose a renewal, are disqualified from sitting as members of the compensation authority.

It would rule out this aspect of possible bias if the law were simply that no member of a renewal authority should sit in a matter referred by such authority.

As to the work of the committee, it can well be argued that confirmation should be made unnecessary where an application is not opposed before the justices, and that in county boroughs the functions of the committee be, in any event, those of a compensation authority only.

These are some, out of many, aspects of licensing law which might well receive consideration in any contemplated review.

G. W. I.

DRIVING WITHOUT DUE CARE AND ATTENTION

THE STANDARD OF CARE

SECTION 12 (1) of the Road Traffic Act, 1930, makes careless driving an offence by providing:—

> "If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, he shall be guilty of an offence."

This provision raises the question: What is the standard of care set by the section? Is it a subjective standard related to the proficiency, good or bad, of the driver, or is it an objective standard fixed in relation to the other users of the road and related to the proficiency of the reasonable man? The few cases on the subject, including the most recent one (*Taylor* v. *Rogers* (1960), *The Times*, 30th January (Q.B.D.)), make it clear, and emphasise that it is the latter, the objective standard, which is applicable. It may be useful to examine the position in the light of these cases, taking first the example of the inexperienced driver, and secondly that of the experienced one.

The inexperienced driver

The first case is that of *McCrone* v. *Riding* (1938), 102 J.P. 109, in which the Queen's Bench Divisional Court discusses the question of the standard of care required under the section of a learner driver, who held a provisional driving licence in accordance with the requirements of the Road Traffic Act, 1934, s. 6, and the Motor Vehicles (Driving Licences) Regulations, 1935, and who had with him, and was under the supervision of, a person as required by para. 16 (3) (*a*) of those regulations, and upon whose motor vehicle was displayed the distinguishing mark as required by para. 16 (3) (*b*) thereof. Upon the hearing of an information charging the respondent with the driving on a certain day at a certain place of a motor vehicle without due care and attention, it was proved or admitted, *inter alia*, that after rounding an acute left-hand bend on his proper and left-hand side of the road, he drove against and knocked down one of two pedestrians who were on the left-hand side of the road, there being no pavement or footway, and the road being about twenty-three feet wide with a footpath on one side only, and there being no other traffic thereon at the time; that the accident was due to his inexperience and lack of skill in that he became confused and failed to steer so as to avoid the pedestrian or to slacken speed in time or to stop, and that it could, and would, have been avoided by a driver with ordinary experience and skill; that he was exercising all the skill and attention to be expected from a person with his short experience, but that he was not exercising the skill, though he was

exercising the attention, to be expected of an ordinary driver. It was submitted in support of a conviction on behalf of the appellant (the prosecutor) that the section did not draw any distinction between different classes of drivers, but that the same standard of due care and attention was required of all drivers of motor vehicles. It was submitted on behalf of the respondent that, as he was exercising all the skill and attention to be expected of the holder of a provisional licence with his short experience, and that as the accident was caused through his inexperience only, there was no such want of care and attention as would justify a conviction. The justices held that no offence had been committed, and dismissed the information, being of opinion that, had the respondent been an ordinary driver, they would have convicted him, but that, though he failed to display such skill as would be expected from an ordinary driver in the circumstances and drove into the pedestrian, such failure, being due to his inexperience and lack of skill, did not constitute such want of care and attention on his part as amounted to an offence under the section. In allowing an appeal by way of case stated and remitting the case to the justices, Lord Hewart, C.J., discussed the standard of care to be applied under the section, saying :—

> "All those findings seem to me to make it quite plain that the justices have misconstrued this section. There is nothing in the section about due experience or suitable skill. The words of the section are that it is an offence when a person drives a motor vehicle 'without due care and attention or without reasonable consideration for other persons using the road.' That standard is an objective standard, an impersonal and universal standard, a standard fixed in relation to the safety of other users of the highway. It is not at all related to the degree of proficiency or degree of experience attained by the individual driver."

The Lord Chief Justice then clarified the meaning of the words "without due care and attention," and dismissed the idea that there are two standards of care, one for the experienced, and one for the inexperienced. He said :—

> "The case should go back to the justices with the direction that regard must be had to the words of this statute 'without due care and attention,' and that it is wrong to assume that the word 'skill' is synonymous with the word 'care,' or that there can be one standard for an ordinary driver and another for somebody else. The question is dependent not upon inexperience or lack of skill, but upon lack of care and attention. I think it is not without significance that the statute uses both the word 'care' and the word 'attention.' In other words the driver, whoever he may be, experienced or inexperienced, must see what he is about. He must pay attention to the thing he is doing, and, perceiving that which he is doing or entering upon, he must do his best, and he must show proper care in the doing of that thing which he is intent on."

The experienced driver

The above judgment of Lord Hewart dealt with the case of the standard of care to be applied where the driver is inexperienced. What, however, is the position where the driver, so far from being inexperienced, is more experienced than the ordinary driver? Is he to be judged by the same standard of care as applies, as has been seen, to the inexperienced and the ordinary driver; or can it be said that by reason of his experience, he will not (in any given circumstances) be guilty of want of due care and attention, although in the same set of circumstances had he had the experience merely of an ordinary driver, it would be held that he had fallen short of the degree of due care and attention required of an ordinary driver? These interesting and important questions arose in *Taylor* v. *Rogers*, *supra*, where the Queen's Bench Divisional Court allowed an appeal by the prosecutor from the decision of the Shropshire justices, who had dismissed an information charging the respondent (the driver of a certain heavy motor lorry with its load of approximately eleven tons) with driving on a certain occasion without due care and attention contrary to the section in question.

The material facts which the justices found were shortly as follows. The respondent was driving the motor lorry on the particular road at a time when it was carrying heavy traffic, and he was following an eight-wheel lorry through a village. On leaving the village, the road curved left; there was a continuous white line round the curve, and the road at that point was twenty-two feet wide. At the beginning of the curve the leading lorry driver made a signal by flashing his rear light, which the respondent understood to mean that it was safe to pass; and the respondent commenced to pass. While he was in the act of passing, a car came in the opposite direction, and he flashed his lights to indicate that he was going to complete the overtaking. In the result the car mounted the verge, but no collision in fact took place. On these findings the justices dismissed the information, being of opinion that the respondent's action was a deliberate, calculated action, taken in full knowledge of the prevailing conditions; that he was giving his full attention to his driving and was not allowing himself to be distracted by extraneous circumstances; and that he could not be said to have been driving without due care and attention. It may be noted that in coming to this decision the justices stated that, had the charge been laid under the second limb of subs. (1) of s. 12 of the 1930 Act, that is to say, of driving "without reasonable consideration for other persons using the road," they might have convicted; having regard, however, to their interpretation of the subsection, they made no finding as to whether the respondent was in any way at fault in overtaking when he did. In his judgment (with which Cassels and Ashworth, JJ., agreed) Lord Parker, C.J., said that he would have thought that there was at any rate a strong prima facie case. There was a comparatively narrow road, a curve with a continuous white line, and these two heavy vehicles with one attempting to overtake the other on the curve. As regards the standard of care which was applicable, the Lord Chief Justice then went on to say that in his judgment the justices had misdirected themselves. The sole question for them in these matters was: Was the respondent exercising that degree of care and attention that a reasonable and prudent driver would exercise in the circumstances? The test was objective, and it mattered not that the failure to exercise that degree of care was a deliberate act, nor whether it arose from an error of judgment. In the result therefore the Divisional Court remitted the case to the justices with a direction that they had misdirected themselves; they should complete their finding of facts, and consider whether on those facts the offence was made out.

Deliberate act or error of judgment

The above two judgments, therefore, place the inexperienced and the experienced driver on the same basis as regards the standard of care required of him as the ordinary driver. The concluding words of the Lord Chief Justice in *Taylor* v. *Rogers*, that the test was objective, and it mattered not

that the failure to exercise that degree of care was a deliberate act, nor whether it arose from an error of judgment, should not be lost sight of in connection with the standard of care required of an ordinary driver. They are a reminder that, as it was put by Lord Goddard, C.J., in *Simpson* v. *Peat* [1952] 1 All E.R. 447, the question in the case of a charge of careless driving under s. 12 (1) whether a man is driving carelessly, to use a compendious expression, raises only a question of fact. There the Divisional Court was considering the effect of the earlier decision as regards an error of judgment in *R.* v. *Howell* (1938), 103 J.P. 9, and the effect of an expression of opinion by the justices that the driver in the particular circumstances of the case then before the court should be convicted of driving without due care and attention, but that, as what he had done had been to commit an error of judgment, he could not in law be guilty of the offence. In allowing an appeal by the prosecutor and remitting the case to the justices with a direction to convict, the court held that, if the driver was not exercising that degree of care and attention which a reasonably prudent driver would have exercised in the circumstances, the offence of driving without due care and attention would be committed by him, and that it mattered not whether or not he was committing an error of judgment. In giving the judgment of the court, Lord Goddard pointed out that the offence under s. 12 (1) of the 1930 Act could be committed although no accident took place, and that equally, because an accident did occur, it did not follow that a particular person had driven without due care and attention; but that if he had, it mattered not why he did so. He then concluded with this supposition as an illustration:—

> "Suppose a driver is confronted with a sudden emergency through no fault of his own. In an endeavour to avert a collision he swerves to his right—it is shown that had he swerved to his left the accident would not have happened. That is being wise after the event, and, if the driver was, in fact, exercising the degree of care and attention which a reasonably prudent driver would exercise, he ought not to be convicted, even though another, and perhaps more highly skilled, driver would have acted differently."

In so deciding, however, the court did not dissent from the actual decision in *R.* v. *Howell* that on the facts as therein stated there had been no dangerous driving, but that the driver was guilty of a mere error of judgment.

M. H. L.

Landlord and Tenant Notebook

FORFEITURE, RELIEF AND DISCOVERY

THERE was a time (some readers may remember) when lecturers dealing with disabilities were wont to raise a laugh by coupling married women with convicts or with lunatics. Such measures as the Law Reform (Married Women and Tortfeasors) Act, 1935, have removed the opportunity. The law, however, still classes landlords exercising powers of re-entry with common informers, refusing them the remedy of administering interrogatories as it did when *Uxbridge* v. *Staveland* (1747), 1 Ves. 56, was decided. The case of *Mascherpa* v. *Direct, Ltd.* [1960] 1 W.L.R. 447 (C.A.); p. 350, *ante*, has shown that discovery of documents relating to forfeiture will not be ordered; but also that when a tenant counter-claims for relief, the landlord is entitled to inspect those documents which bear on that question.

The alleged cause of forfeiture in the recent case was dilapidations. Discovery would be more useful to a landlord seeking to forfeit for breach of covenant and condition against alienation, or one restricting user, than in such a case, and *Mexborough (Earl of)* v. *Whitwood Urban District Council* [1897] 2 Q.B. 111 (C.A.), contains a useful examination of the position. The cause of the alleged forfeiture was breach of covenant not to assign or sub-let without consent, and there could, in those days, be no question of relief: it was the Law of Property Act, 1925, s. 146, which made such breaches relievable. Painstakingly, the Court of Appeal considered (i) whether an action for possession by reason of breach of a proviso for re-entry was a forfeiture action, and (ii) if so, whether the defendant was entitled to the same protection as a defendant in an action for penalties.

Forfeiture

On the first of these points, Chitty, L.J., said: "It was argued by the counsel for the plaintiff that this was not a case of forfeiture in the proper sense of the term. The answer to that appears to me to be that, ever since *Dumpor's Case*, it has always been treated as such . . ."

Dumpor's Case (1603), 4 Co. Rep. 119*b* (also reported as *Dumper* v. *Syms* (1603), Cro. Eliz. 815), was once authority for the proposition that a licence to assign or sub-let operated as a waiver, once and for all, of a condition restricting such alienation: the Law of Property Amendment Act, 1859, ss. 1 and 2, disposed of this (see now the Law of Property Act, 1925, s. 143). But the decision may be said to illustrate the attitude of the courts towards forfeiture. What had happened was that the president and scholars of Corpus Christi College, Oxford, had granted a thirty years' lease to one *B* who was not to alienate without licence; five years later they gave him a licence to assign to one *T*, who died, leaving the lease to his son; the son died intestate, and his administrator purported to alien to the defendant without asking for a licence. Thereupon the college authorities let the property to the plaintiff. While the decision that "although the proviso be that the lessee or his assigns shall not alien, yet when the lessors license the lessee to alien, they shall never defeat, by force of the said proviso, the term which is absolutely aliened by the licence" was considered "extraordinary, but the law of the land," by Lord Eldon in *Brummell* v. *Macpherson* (1807), 14 Ves. 173, the reports show that the court was very willing to entertain any argument which could be advanced in the defendant's favour, such as a point that the first lease had been void because no corn was reserved (based on 18 Eliz. I, c. 6: one-third of the rent to be in wheat or malt) and one that the person authorised to take possession had not been so authorised under seal.

I do not know whether the fact that the case was heard a few years after "The Merchant of Venice" had been written

had anything to do with this attitude; but it persisted: "the courts have always held a strict hand over these conditions defeating leases" (*Crusoe d. Blencowe* v. *Bugby* (1771), 2 Wm. Bl. 766); and went on persisting after the Conveyancing Act, 1881, had introduced statutory relief.

"For the protection of people"

Forfeiture is, indeed, a wide term (there was the forfeiture of felons' property abolished by the Forfeiture Act, 1870; there is forfeiture on alienation in mortmain) and despite the contention that a distinction ought to be drawn between an action for penalties and an action to enforce a right of property given by the defendant's own contract, Esher, M.R.'s judgment in *Mexborough (Earl of)* v. *Whitwood Urban District Council* compared the rule that where a common informer sues for a penalty the courts will not assist him by their procedure in any way with the similar rule "acted upon from the earliest times" in respect of actions brought to enforce a forfeiture of an estate in land: "They are rules made for the protection of people in respect of their property, and against common informers."

Relief

In *Mascherpa* v. *Direct, Ltd.*, the cause of forfeiture alleged was, as mentioned, breach of repairing covenants. The defendants counter-claimed for relief. The report does not go into details, but Hodson, L.J., said in his judgment:—

> "The pleadings upon the question whether relief should be granted contained a number of matters, quite apart from the question raised as to the want of repair of the premises, the contention of the landlord being, broadly speaking, that the defendants are not financially sound and able to shoulder the obligations of the lease; and it is in respect of that aspect of the matter that discovery is by them primarily sought."

The court held that the issues were indeed separate and that the remedy should be granted.

This accords, of course, with Cozens-Hardy, M.R.'s well known statement of the principles on which relief should be granted in his judgment in *Rose* v. *Hyman* [1911] 2 K.B. 234 (C.A.); roughly, the suppliant must make amends for what he has done, and promise not to do it again—and no doubt the promise must, like the intention to demolish, etc., in the cases under the Landlord and Tenant Act, 1954, Pt. II—see *Reohorn* v. *Barry Corporation* [1956] 1 W.L.R. 845 (C.A.)—be one which he is able as well as willing to carry out.

An interesting point might be whether the defendant in such a case would be better off if he did not ask for relief in a counter-claim: *Mitchison* v. *Thompson* (1883), Cab. & E. 72, showed that it can be granted though not sought in pleadings, conditional relief being given against forfeiture of a lease of forty-six small and very dilapidated houses.

R. B.

HERE AND THERE

THE END

CARYL CHESSMAN is dead. If he had lived until 25th June it would have been just twelve years since he was condemned to death for kidnapping and rape. That respite he owed to the cool tenacity and inexhaustible ingenuity with which he exploited all the technical complexities of the law of California and the United States. In strict logic if he lost the game, he must resign himself to pay the penalty, with such consolation as it might be to him that he had, in the event, survived many of those who were concerned in his trial, including the judge who sentenced him. If he was guilty in 1948, he was just as guilty in 1960 and the courts, after anxious considering for almost twelve years the desperate pleas which he submitted to them, remained convinced of his guilt. He, for his part, maintained his innocence. He admitted defiantly that he had been a juvenile delinquent and a thief—not a particularly successful thief. For his long criminal record he truculently blamed "society." For his capital conviction he blamed the malice of underworld rivals who, he said, had "framed" him. But it was only in his very last despairing efforts to avert his fate that he named a fugitive criminal as the bandit whose sexual assaults at gun-point had brought terror to lonely roads.

PUBLIC EXECUTION

NEVER since public executions were abolished in civilised countries has any execution been so public as this one, for Chessman's fate was one continuous long-drawn-out execution conducted before the eyes of the world, a veritable *danse macabre*, in which death and the condemned man stepped it out, now advancing, now retiring, until at last death took him by the throat. Not all the worked-up commercial over-dramatisation of the newspapers—this execution in publicity—could destroy the essence of the tragedy. The extraordinary thing was the way in which throughout the years Chessman gained in stature. Dr. Johnson was, as always, right when he said: "Depend upon it, sir, when a man knows that he is to be hanged in a fortnight it concentrates his mind wonderfully." Never were those words so well justified as in Chessman's case. The petty criminal had not the inspiration of martyrdom or dying for a cause. He was an agnostic without the support and consolation of religion. But his latent intelligence, steeled by peril, sharpened by crisis, made both an accomplished self-taught lawyer of him and also the author of two moving books which carried his story to every corner of the world. But, above all, he gained in maturity and depth of character and, after the long years in which he was face to face with the ultimate realities of life and death, he met his end with a stoic courage.

THE LAW'S DELAYS

SHOULD Chessman have been reprieved? In such a question strict logical legalism is not the ultimate criterion. Personalities as diverse as His Holiness the Pope and Brigitte Bardot have expressed the opinion that his life should have been spared. The Vatican newspaper declared that his slow agony had "expiated his guilt, however grave." Various countries have been congratulating themselves that such a thing could not happen with them. The Paris newspaper, *Le Figaro*, devoted a whole page to the execution and in a collection of opinions, garnered from persons prominent and obscure, the preponderant view expressed was that it was cruel and uncivilised. In this particular context England doubtless has a particularly good tradition. We have developed a knack of tying up our criminal proceedings into neat, manageable parcels, handled with apparent ease and prompt dispatch.

No one is kept in undue suspense as to what the ultimate issue will be. French procedure is far more erratic. Look at the case of Marie Besnard, charged in 1949 with poisoning thirteen people and eventually put on trial but still neither convicted nor acquitted. The case was adjourned while the medical experts wrangled over their findings. In custody for five years, the accused has been for some time provisionally at liberty but still in the shadow of the guillotine. Incidentally, now that Chessman has passed beyond recall, the world may begin to notice another prisoner who has spent nine years in Death Row in San Quentin gaol but, having no literary talents, has created no stir in the world. In 1950 an Indian named Rayna Tom Carmen was convicted of shooting a lad of sixteen. Three times execution was stayed and eventually the United States Supreme Court ruled that the Californian Superior Court had had no jurisdiction to try him because the killing was on Federal property allotted to Indians. That set the stage for a new trial, and there the matter stood last March. If the newspapers are at a loss for a sequel, here it is.

RICHARD ROE

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Abandonment of Animals Bill [H.C.] [3rd May.
Brighton Corporation Bill [H.C.] [5th May.
Bromley College and Other Charities Bill [H.C.] [5th May.
Chipping Sodbury Town Trust Bill [H.C.] [5th May.
Civil Aviation (Licensing) Bill [H.C.] [3rd May.
Newcastle upon Tyne Corporation Bill [H.C.] [3rd May.
Professions Supplementary to Medicine Bill [H.C.] [5th May.
Saint Stephen Bristol (Burial Grounds, etc.) Bill [H.C.] [3rd May.
Somerset County Council Bill [H.C.] [3rd May.
United Charities of Nathaniel Waterhouse and Other Charities (Halifax) Bill [H.C.] [5th May.

Read Second Time:—

Clean Rivers (Estuaries and Tidal Waters) Bill [H.C.] [5th May.
Royal Exchange Assurance Bill [H.C.] [3rd May.
Saint Martin's Parish Church Birmingham Bill [H.C.] [3rd May.
Saint Peter's Church Nottingham (Broad Marsh Burial Ground) Bill [H.C.] [3rd May.

Read Third Time:—

Highlands and Islands Shipping Services Bill [H.C.] [3rd May.
Occupiers' Liability (Scotland) Bill [H.C.] [3rd May.

In Committee:—

Game Laws (Amendment) Bill [H.C.] [5th May.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time:—

Dock Workers (Pensions) Bill [H.C.] [4th May.
To exclude the operation of the Truck Acts, 1831 to 1940, and the Shop Clubs Act, 1902, in relation to provisions concerning pensions under the Dock Workers (Regulation of Employment) Act, 1946.

Protection of Tenants (Local Authorities) Bill [H.C.] [4th May.
To provide security of tenure for tenants of local authorities, authorities owning or managing new towns, housing associations, housing trusts, and other similar bodies.

Read Second Time:—

Finance Bill [H.C.] [3rd May.

STATUTORY INSTRUMENTS

British Transport Commission (Male Wages Grades Pensions) (Amendment) Regulations, 1960. (S.I. 1960 No. 784.) 5d.
European Free Trade Association (Origin of Goods) Regulations, 1960. (S.I. 1960 No. 780.) 4s. 11d.
Exeter-Leeds Trunk Road (Whitfield Diversion) Order, 1960. (S.I. 1960 No. 767.) 5d.
London Traffic (Prescribed Routes) (Lambeth) (No. 2) Regulations, 1960. (S.I. 1960 No. 778.) 5d.
London Traffic (Prescribed Routes) (Paddington) (Revocation) Regulations, 1960. (S.I. 1960 No. 785.) 4d.
Mental Health (Approval of Medical Practitioners) Regulations, 1960. (S.I. 1960 No. 785.) 5d.
National Health Service (Transfer of Officers and Compensation) (Amendment) Regulations, 1960. (S.I. 1960 No. 772.) 5d.
Post-War Credit (Income Tax) Amendment Regulations, 1960. (S.I. 1960 No. 769.) 6d. See p. 392, *post*.
Savings Banks (Deposits) (Limits) Order, 1960. (S.I. 1960 No. 779.) 5d. See p. 377, *ante*.
Stopping up of Highways Orders, 1960:—
County of Lancaster (No. 6). (S.I. 1960 No. 766.) 5d.
County of Stafford (No. 6). (S.I. 1960 No. 755.) 5d.
Wages Regulation (Baking) (England and Wales) Order, 1960. (S.I. 1960 No. 770.) 8d.
Wages Regulation (Road Haulage) Order, 1960. (S.I. 1960 No. 754.)

SELECTED APPOINTED DAYS

May

2nd — Rules of the Supreme Court (No. 1), 1960. (S.I. 1960 No. 545.)
2nd — Savings Banks (Deposits) (Limits) Order, 1960. (S.I. 1960 No. 779.)
9th — National Insurance (Contributions) Amendment Regulations, 1960. (S.I. 1960 No. 782.)
National Insurance (Unemployment and Sickness Benefit) Amendment Regulations, 1960. (S.I. 1960 No. 781.)
16th — Post-War Credit (Income Tax) Amendment Regulations, 1960. (S.I. 1960 No. 769.)

ILLEGIBLE DOCUMENTS: PENALTY?

Lord Evershed, M.R., complained on 5th May of the growing practice of handing documents to the court that were almost illegible. He intimated that in future the consequence might be that the solicitors concerned would be deprived of their costs.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

PROFITS TAX: COLLIERY AFTER NATIONALISATION: NOT FUNCTIONING AS PROPERTY HOLDING COMPANY

Henry Briggs, Son & Co., Ltd. *v.* Inland Revenue Commissioners

Lord Evershed, M.R., Pearce and Harman, L.JJ.
11th March, 1960

Appeal from Upjohn, J.

After the nationalisation of the coal industry in 1946, Briggs Collieries, Ltd., a subsidiary of the appellant company, and formerly a colliery company, decided to remain in being for the purpose of receiving the compensation provided by the nationalising Act, but not to embark on any trade or other activity. The compensation was finally paid in 1955 but in the meantime the company received certain interim payments and paid dividends to the parent company. The parent company appealed against assessments to profits tax on the ground that the dividends received from the subsidiary had been included in the computation of the profits. It was submitted that they ought to have been excluded because the subsidiary company was to be deemed for the purposes of s. 19 (4) of the Finance Act, 1937, to be carrying on the business of holding property, that is the right to receive the compensation, and so the dividends were franked investment income as defined by para. 7 (1A) of Sched. IV. The Special Commissioners, and Upjohn, J., on appeal, decided against the parent company, who appealed.

LORD EVERSHED, M.R., said that as from the date when the nationalisation came into force the subsidiary company had deliberately determined to have, and had in fact had, no function or activity whatever, and was not, therefore, within s. 19 (4) carrying on the business of a property holding company. That conclusion was supported by *Inland Revenue Commissioners* v. *Desoutter Bros.* (1945), 62 T.L.R. 110.

PEARCE, L.J., agreed.

HARMAN, L.J., also agreeing, qualified his earlier statement in *Carpet Agencies* v. *Inland Revenue Commissioners* (1958), 38 T.C. 223, that for a company to come within s. 19 (4) it must be shown that the function of making money by holding investments had " always . . . or for a considerable time " been a function of the company. Appeal dismissed.

APPEARANCES: *Sir John Senter*, Q.C., *Desmond Miller* and *Neil Elles* (*Thicknesse & Hull*); *John Foster*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[1 W.L.R. 532**

INCOME TAX: WORK-IN-PROGRESS: METHOD OF VALUATION: WHETHER "ON-COST" OR "DIRECT COST" METHOD TO BE APPLIED: WHETHER ANY PRINCIPLE INVOLVED

Duple Motor Bodies, Ltd. *v.* Inland Revenue Commissioners

Duple Motor Bodies, Ltd. *v.* Ostime (Inspector of Taxes)

Lord Evershed, M.R., Pearce and Harman, L.JJ.
18th March, 1960

Appeal from Vaisey, J. ((1959), 103 SOL. J. 583).

The taxpayers, a company, carried on the business of building to order bodies for road vehicles, mostly motor coaches, and at the end of each accounting period the taxpayers had in hand a number of unfinished bodies. The taxpayers had for several years for the purpose of computing the value of work-in-progress for income tax purposes used the direct cost method; on that basis only the direct cost of materials and labour expended on such work was taken into account. For the three tax years in question the Crown sought to value the work-in-progress on an " on-cost " basis by adding to the direct cost a proportion of indirect expenditure incurred, such as overheads. It appeared on the facts that in the year when the taxpayers were not working to full capacity the direct cost method showed that the work-in-progress was £2,000 less in value at the end of the year than at the beginning, with the result that taxable profits would be reduced by £2,000. The application of the on-cost method in the same year showed the value of the work-in-progress as £14,000 more than at the beginning of the year, so that the taxable profits or gains were increased by £14,000. The Crown sought to have decided as a matter of broad principle that the " on-cost " method was the right principle to apply in valuing work-in-progress for income tax purposes. The Special Commissioners found that the accounting profession as a whole was satisfied that either method would produce a true figure of profit. The Commissioners, however, found in favour of the " on-cost " method of valuation. Vaisey, J., reversed their decision. The Crown appealed.

LORD EVERSHED, M.R., said that the Special Commissioners were persuaded to deal with this matter as one of general principle, and they so stated; and, as a matter of general principle, they expressed their own preference in favour of the on-cost method. In so far as they did that, it seemed to him inevitable that they were not deciding a question of fact but a question of law—or, at least, of mixed law and fact. He was for his part quite clear that it would be wrong for the Court of Appeal to deal with this matter as one of principle, and to decide now that either for all purposes of this company or, still less, for all purposes in the case of trading companies, one method was the right and proper method and the other was not. So to do would go altogether outside the function of the court, which was to decide the particular problem presented by the particular case before it. On the facts and figures of the present case he was of opinion that, for these particular years and in relation to these particular taxpayers, the on-cost method was shown to produce, on the face of it, an unfair result; but, again, he would emphasise that this was not an oblique way of saying that he was affirming the view as a matter of principle that the direct cost method was the right one. In those circumstances, he was quite content to put it in this way: referring back to the question posed by the Special Commissioners, he thought that, in relation to the particular years and to these particular taxpayers, which was the only matter with which this case was concerned, the decision of the Special Commissioners was wrong in law. Having come to that conclusion, he would therefore dismiss this appeal.

PEARCE and HARMAN, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *F. N. Bucher*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*); *R. E. Borneman*, Q.C., and *C. N. Beattie* (*Wilkinsons*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[1 W.L.R. 510**

INCOME TAX: EXCESS RENT: ROYALTIES OF SAND PIT: WHETHER ACTUAL OR NOTIONAL RECEIPTS TAKEN IN MAKING ASSESSMENT: WHETHER ROYALTIES PART OF RENT

Trustees of Tollemache Settled Estates *v.* Coughtrie (Inspector of Taxes)

Lord Evershed, M.R., Pearce and Harman, L.JJ.
24th March, 1960

Appeal from Upjohn, J. ([1959] 1 W.L.R. 960; 103 SOL. J. 544).

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(*continued on p. xiv*)

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By a lease dated 17th December, 1946, a sand pit was let for a term of twenty-one years from 25th March, 1946, at an annual surface rent of £10 and a royalty of 6d. per ton for all sand worked. In 1946–47 the royalties payable under the lease were just under £100, but they mounted steadily and in 1955–56 were £850, an average of about £390 a year. At first the sand pit was not separately assessed to Sched. A, but for the year 1953–54, following the decision in *Russell* v. *Scott* [1948] A.C. 422, it was assessed to Sched. A tax in the sum of £3 5s. and assessments of £5 and £1,000 in respect of excess rents and royalties respectively were made under Sched. D. On appeal the General Commissioners held that the royalties were within s. 175 of the Income Tax Act, 1952, and should be treated as excess rents under Sched. D, and they altered the assessment to £35 in respect of the dead rent and £646 in respect of the actual royalties received in that year, less the Sched. A assessment, the net aggregate figure being £681. The taxpayers appealed. Upjohn, J., reversed the decision of the Commissioners, holding that the assessment should be on Sched. A principles, and ordered that the case should be remitted to the Commissioners to adjust the assessment in accordance with his judgment. On appeal it was admitted that the royalties were covered by s. 175 of the Income Tax Act, 1952, and fell to be taxed as excess rents under Case VI of Sched. D. The Crown contended, contrary to what Upjohn, J., held, that the assessment should be made year by year on the basis of the actual receipts, subject to certain deductions, and not by way of assessment as on Sched. A principles with evidence as to values. *Cur. adv. vult.*

PEARCE, L.J., delivering the first judgment, referred to s. 175 of the 1952 Act, and said that the problem here was to find what was the amount which would have been the amount of the assessment for the purposes of Sched. A if the annual value had been determined "by reference to that rent and the other terms of the lease." "That rent" was the rent to which the lessor was entitled in the year in question, the rent whose excess over the Sched. A assessment had provoked the incidence of s. 175—namely, in this case, £681. The opening words, "If, as respects any year of assessment," indicated that the section envisaged a yearly operation. The fact that the charge was under Case VI of Sched. D made it clear that the assessment was aimed at a year's profit or gain. According to the taxpayers, the section really did no more than provide for a revaluation of Sched. A assessments, and the resulting excess liability was only put into Case VI, Sched. D, because that was a receptacle for oddments. It was said further that the resulting assessment would have to be an inquiry on Sched. A principles; namely, what the unit was worth to be let by the year having regard not only to the rent of £681 received that year, but also "to the other terms of the lease," including the fact that there were several years of the lease to run. It was not disputed that this procedure would produce a different and practically always a lower figure than that produced by an assessment on the actual figure of the excess rent. But he (his lordship) could not accept this view of the section. The Sched. A assessment under s. 82 was an attempt to find the annual value. If a rack rent had been fixed within the preceding seven years, then that was the annual value: if such a useful guide could not be found, and the premises were not let at a rack rent so fixed, the inquiry was to ascertain the rack rent which the premises were worth to be let by the year. From a practical point of view, s. 175 came into play because during the year in question there was an extra profit to be taxed, and the rent to which the lessor had become entitled had shown the inadequacy of the Sched. A assessment; it had shown that either the actual rack rent or the estimate of the rack rent at which the premises were worth to be let by the year had produced an annual value that was incorrect for the year in question. The section directed that the lessor should be chargeable on the amount which would have been the Sched. A assessment if the annual value of the unit had been determined by reference to "that rent"—namely, a rent of £681; that was, if the actual rack rent or the rack rent at which it was worth to be let had been £681. There was no need for further valuations or for calculations under s. 82 (2) (*a*) or (*b*). The words "by reference to that rent" provided an *ad hoc* formula for the ascertainment of the annual value; a formula which excluded further estimation. The figure of £681 was, as it were, written into s. 82, or was a *tertium quid* to subs. (2) (*a*) and (*b*). The case had to be considered as a Sched. A case only for the purpose of deductions and allowances. When s. 175 referred to the annual value being determined by reference to "that rent and the other terms of the lease," the "other terms" meant those which were relevant to allowances, such as liability for rates and maintenance. The Master of the Rolls in argument had pointed out that if the excess rent was lower than the rent at which they were worth to be let (as it well might be) the computation could not be made under s. 82 (2) (*b*), as the taxpayers contended should be done in each case. For the computation had to be done by reference to "that rent"—that was, the actual rent for the year—while s. 82 (2) (*b*) demanded the computation of the rack rent at which they were worth to be let. In such a case, a *tertium quid* was necessary in s. 82 (2), and that *tertium quid* must surely be the actual rack rent for the year in question, which was the objective of s. 175. It would be thus more analogous to subs. (2) (*a*), which used a recent actual rack rent where it could be found. It would be contrary to good sense that the section, whose object was to ensure that certain actual profits did not go untaxed, should throw the assessment away from the realm of actual and exact figures, and back into the realm of estimation, in which the profit had once already been allowed to escape. Seeing that the assessment under s. 175 was a yearly one, intended to catch a particular year's profit, it was hard to believe that it intended to send each case back to s. 82 for a valuation focused not on the particular year but on a period of years, and calculated to assess "what a tenant taking one year with another may fairly and reasonably be expected and required to pay" (per Swinfen Eady, L.J., in *Gundry* v. *Dunham* (*Surveyor of Taxes*) (1915), 7 T.C. 12, at p. 22). Had such an odd result been intended it would have been very easy to say so. The normal case of excess rents was dealt with by direct calculation without a further assessment on Sched. A principles. For instance, in the case of *Strick* (*Inspector of Taxes*) v. *Longsdon* (1953), 34 T.C. 528, the direct figures of the excess rents were used without embarking on further computation (except as to deductions). He saw no reason why this case should differ from it. This view accorded with that expressed by Lord Reid in a somewhat different context in *Barron* v. *Littman* [1953] A.C. 96, at p. 119. For these reasons he would allow the appeal.

HARMAN, L.J., delivered a concurring judgment.

LORD EVERSHED, M.R., also concurring, said that he would like to register his disapproval of the form of order whereby this case was remitted to the Commissioners to adjust the assessment in accordance with the judgment. The order must be self-contained. Appeal allowed. Leave to appeal.

APPEARANCES: *R. O. Wilberforce*, Q.C., and *Alan Orr* (*Solicitor of Inland Revenue*); *H. H. Monroe* (*Peake & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 825

FACTORY: THREE MOVABLE STEPS: WHETHER A "STAIRCASE"

Kimpton *v.* Steel Company of Wales, Ltd.

Sellers, Ormerod and Upjohn, L.JJ. 25th March, 1960

Appeal from Edmund Davies, J.

The plaintiff, while descending three steel steps in the course of his work, slipped and fell on the second step, whereby he sustained personal injuries. The presence of a handrail

on the steps would probably have prevented the accident. The three steps were seemingly wedged into a platform, to which they gave access and egress, but were otherwise removable. They were just over 3 feet in height. Section 25 (2) of the Factories Act, 1937, required that every staircase in a factory had to be provided with a substantial handrail. The judge held that the steps constituted a staircase so that the defendants, who employed the plaintiff, were in breach of their statutory duty to the plaintiff. The judge further held that the defendants were negligent at common law in not providing a handrail for these particular steps. The defendants appealed.

SELLERS, L.J., said that there was little doubt that on the strict dictionary definition one might say that these steps fell within the dictionary definition. But although the dictionary definitions were a guide, they could not govern the construction of terms used in the Factories Act, 1937. The right approach was stated by Somervell, L.J., in *Bath* v. *British Transport Commission* [1954] 1 W.L.R. 1013, at p. 1015: "One is sometimes tempted to construe perfectly familiar words, but if they are, as these words are, perfectly familiar, all one can do is to state whether or not one regards them as apt to cover or describe the circumstances in question in any particular case." It was there held that an excavation which constituted a dry dock was not an "opening" within s. 25 (3) of the Factories Act, 1937. Looking at the matter in the way indicated by Somervell, L.J.'s dictum, it could not be said that these few steps were a "staircase." It was not the way that they would be described; indeed, it was not the way they were described by the witnesses in the case who were familiar with them. This was not a highly scientific basis on which to base a conclusion, but it was a very practical one, and to be preferred to a dictionary definition which disregarded the setting in which the Act had to be construed and applied. His lordship then considered the judge's alternative finding that the defendants had been negligent at common law in not providing a handrail, and held that that finding was justified. Therefore he would uphold the judge's decision on common-law negligence, and dismiss the appeal on that ground.

ORMEROD and UPJOHN, L.JJ., delivered concurring judgments.

APPEARANCES: *John Thompson*, Q.C., and *Alan T. Davies* (*Kenneth Brown, Baker, Baker*, for *Gee & Edwards*, Swansea); *F. Elwyn Jones*, Q.C., and *David Pennant* (*Rowley Ashworth & Co.*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law] **[1 W.L.R. 527**

ESTATE AGENT'S COMMISSION: ABORTIVE SALE: WHETHER COMMISSION EARNED

Ackroyd & Sons *v.* Hasan

Sellers, Ormerod and Upjohn, L.JJ. 12th April, 1960

Appeal from Winn, J. ([1959] 1 W.L.R. 706; 103 SOL. J. 472).

The plaintiffs received instructions from the defendant to dispose of her leasehold interest in premises at 11 Wardour Street, W.1. The contract entitling them to commission was contained in a letter sent to the defendant and her husband, the material part of which read: "We would take this opportunity of confirming that in the event of our introduction of a party prepared to enter into a contract to purchase on the above terms or on such other terms to which you may assent you will allow us commission upon the scale of the Estate Agents' Institute." The plaintiffs never introduced anyone prepared to purchase on the terms stated in the letter, but they did introduce two applicants interested in purchasing the premises on the basis of terms which formed the subject of prolonged negotiations between the respective solicitors. Finally, the applicants signed their part of a draft contract which was forwarded to the defendant's solicitor; the defendant's solicitor sent her part of the contract to her for signature, but when she received it she realised that there had been a misconception about certain storage space on the first floor, and she declined to sign the draft contract. As a result, the proposed sale never materialised. The plaintiffs' claim for their commission was dismissed by Winn, J. The plaintiffs appealed.

UPJOHN, L.J., said that the defendant could not assent to the proposed sale until she had received and approved the terms of the draft contract. It would be an impossible situation if during the negotiations the parties could be taken to have assented piece by piece to the terms of the proposed sale as they were agreed between the respective solicitors. Solicitors had no authority to bind their clients in that way. In the present case when the defendant saw the completed documents she realised there had been a misconception, and the sale went off. No assent had been given by her to the proposed sale, and accordingly the plaintiffs never established the event stipulated in the contract as a condition of earning their commission. On that ground the appeal failed. The judge however had said that he was constrained by the philosophy of the decisions of the Court of Appeal in 1951 and 1952 to treat the words "party prepared to enter into a contract" as a nullity and to read them as "a party who does enter into a contract." There was no justification for such a construction, which was contrary to the ordinary meaning of those words. Estate agents' contracts were governed by the ordinary rules of construction. The judge had also said that "assent" meant a legally binding assent; that was not the proper meaning of the term. He would therefore dismiss the appeal for different reasons from that given by the judge.

ORMEROD, L.J., delivered a concurring judgment.

SELLERS, L.J., said he agreed that the defendant had not given her assent to the proposed sale. But he was not at present satisfied that the assent required by the contract could be an assent which fell short of a concluded legal bargain.

APPEARANCES: *Harold Lightman*, Q.C., and *Edward Seeley* (*Pratt & Sydney Smith*); *D. P. Croom-Johnson*, Q.C., and *Peter Ripman* (*R. C. de M. Blum*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law] **[2 W.L.R. 810**

Queen's Bench Division

LIBEL: NEWSPAPER: REPORT OF STATEMENT BY SOLICITOR AT TRIAL

Burnett & Hallamshire Fuel, Ltd. *v.* Sheffield Telegraph & Star, Ltd.

Salmon, J. 2nd March, 1960

Action for libel tried with a jury.

A lorry driver, employed by the plaintiffs, a firm of coal merchants, pleaded guilty at a magistrates' court to stealing a quantity of coal, the property of the plaintiffs. A solicitor who was prosecuting for the local authority made a speech to the magistrates, telling them what the case was about in his view. A reporter from the defendants' newspaper was present in court and took a shorthand note and wrote out a report which appeared in the defendants' newspaper on the same evening. The plaintiffs claimed that by the words of the report the defendants meant, and were understood to mean, that the plaintiffs connived at thefts by employees which they knew to be taking place, and tried to protect their employees when caught in the act, and preferred to deliver short weight to their customers rather than do their duty by prosecuting such employees. The defendants claimed, *inter alia*, that the words were a fair and accurate report of proceedings publicly heard before the court on the hearing of the charge.

SALMON, J., in his summing up, said that it had been submitted by counsel for the plaintiffs that there was a rule

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Northwood and Pinner.—MANDLEY & SPARROW, Auctioneers, Valuers, etc., 25 Maxwell Road, Northwood. Tel. 3295/6. And branches in Hertfordshire.

Northwood and Pinner.—SWANNELL & SLY, 3 Maxwell Road, Northwood. Tel. 19. Valuers, Auctioneers, etc.

Pinner and District.—BARR & MEAD (C. Grainger, F.A.L.P.A., M.R.San.I.), 2 High Street, Pinner. PINner 7727 and 7800. Also at South Harrow, Harrow and Ruislip.

Pinner (Hatch End).—BRODIE, MARSHALL & CO., Auctioneers, Valuers and Estate Agents, 339 Uxbridge Road, Hatch End. Telephone Hatch End 2238 and 2239.

Ruislip and District.—BARR & MEAD (C. Grainger, F.A.L.P.A., M.R.San.I.), 108 High Street, Ruislip. Tel. Ruislip 2215 and 4583. Also at South Harrow, Harrow and Pinner.

Ruislip, Ickenham and District.—JOHN MEACOCK AND CO., 123/125 High Street, Ruislip. Tel. Ruislip 3072/3/4. And opposite the Church, Ickenham. Tel. Ruislip 5526 and 9824.

Southall and Greenford.—AUSTIN FARR & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 11 South Road, Southall. SOU 6555 (4 lines). 45 The Broadway, Greenford. WAX 4642/4438.

Stanmore.—SYDNEY WARD, LTD. (W. C. Wedgewood, F.V.I.), 41 Church Road, Stanmore. Tel. GRimsdyke 120.

Wembley Park.—LLOYDS (Principal D. J. Westmore, F.R.I.C.S., M.R.San.I.), Chartered Surveyors, Auctioneers and Valuers, 13 Bridge Road, Tel. Arnold 1123/4.

West Drayton and Yiewsley.—R. WHITLEY & CO., Chartered Auctioneers and Estate Agents, 40 Station Road. Tel. W. Drayton 2185.

NORFOLK

Cromer.—R. J. WORTLEY, F.R.I.C.S., Chartered Surveyor, etc., 15 Church Street. Tel. Cromer 2069.

Norwich.—ALDRIDGE & PARTNERS, 22 Surrey Street, Surveyors and Estate Agents. Tel. Norwich 28517/8.

Norwich.—CLOWES, NASH & THURGAR, Est. 1848 (H. M. Thurgar, F.A.I., R. F. Hill, F.A.L.P.A., C. M. Thurgar, A.A.I.), 6 Tombland. Tel. 27261/2.

Norwich.—J. E. TAYLOR, F.A.L.P.A., Auctioneer and Estate Agent, 25 Tombland. Tel. 26638.

Norwich and East Anglia.—K. H. FIELDING & SON (J. L. Fielding, F.R.I.C.S., F.A.I.), Chartered Surveyors, etc., 1 Upper King Street, Norwich. Tel. 22980.

West Norfolk.—CRUSO & WILKIN, Chartered Auctioneers and Estate Agents, 27 Tuesday Market Place, King's Lynn. Tel. King's Lynn 3111/2.

NORTHAMPTONSHIRE

Northampton and Daventry.—MERRY, SONS & CO., LTD., Auctioneers, Valuers and Estate Agents, 9 Fish Street, Northampton. Tel. 136. 33 Sheaf Street, Daventry. Tel 336.

Northampton and District.—WOODS & CO., F.A.I., Chartered Auctioneers and Estate Agents, Valuers, 18 Castilian Street, Northampton. Tel. 3300/1. Established 85 years.

Peterborough and District.—DAKING & DAKING. Est. 1887. Auctioneers, Valuers, Surveyors and Estate Agents, Broadway, Peterborough. Tel. 5245/6.

Peterborough and District.—FOX & VERGETTE, Auctioneers, Valuers, Surveyors and Estate Agents, 16 Priestgate. Tel. 4261/2. Est. over 150 years.

Peterborough and East Northants.—NORMAN WRIGHT, Chartered Surveyor, Chartered Auctioneer and Estate Agent, 26 Priestgate, Peterborough. Tel. 5695/6.

NORTHUMBERLAND

Newcastle upon Tyne, covering the North.—HINDMARSH, HEPPELL & BOURN (Est. 1862), Chartered Auctioneers and Estate Agents, Surveyors, 61 Westgate Road, Newcastle upon Tyne. And at Wallsend-on-Tyne.

NORTHUMBERLAND AND DURHAM

HINDMARSH & PARTNERS, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 49 Park View, Whitley Bay (Tel. 23351/2), 107 Northumberland St., Newcastle (Tel. 610081 (4 lines)). And at Gateshead and Alnwick.

Newcastle.—DAVID A. LARMOUR & SON, F.R.I.C.S., F.A.I., Saville Row. Tel. Newcastle 20727/8.

WALLHEAD GRAY & COATES, Chartered Auctioneers, and Estate Agents, Surveyors and Valuers, 84 Pilgrim Street, Newcastle. (Tel. 27471/2.) 75 West Street, Gateshead. (Tel. 72197.) 7 Priestpopple, Hexham. (Tel. 302.) 26 Frederick Street, Sunderland. (Tel. 2544.)

NOTTINGHAMSHIRE

Newark.—EDWARD BAILEY & SON, F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 7 Kirkgate, Newark. Tel. 39.

Nottingham.—ROBERT CLARKE & CO., Chartered Surveyors and Rating Valuers, Oxford Street. Tel. 42534/5.

Nottingham.—WALKER, WALTON & HANSON, Chartered Surveyors and Valuers, Chartered Auctioneers and Estate Agents, Byard Lane. Est. 1841. Tel. Nottingham 54272 (7 lines).

Retford.—HENRY SPENCER & SONS, Auctioneers, 20 The Square, Retford, Notts. Tel. 531/2. And at 4 Paradise Street, Sheffield. Tel. 25206. And 91 Bridge Street, Worksop. Tel. 2654.

OXFORDSHIRE

Bicester, Thame and Oxford.—E. P. MESSENGER & SON, Chartered Surveyors, Auctioneers, Valuers, etc. Thame 263/4; Bicester 10; and Oxford 47281.

Oxford and District.—BUCKELL & BALLARD. Est. 1887. R. B. Ballard, F.A.L.P.A., H. I. F. Ryan, F.R.I.C.S., F.A.I., H. S. Ballard, A.R.I.C.S., F.A.I., 58 Cornmarket Street, Oxford. Tel. 44151, and at Wallingford, Berks. Tel. 3205.

Oxford, Banbury and surrounding districts.—E. J. BROOKS & SON, F.A.I. (Established 1840), Chartered Auctioneers and Estate Agents, Surveyors and Valuers, "Gloucester House," Beaumont Street, Oxford. (Tel. 4535/6), and 54 Broad Street, Banbury (Tel. 2670).

Thame and District.—PERCY BLACK & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 60 North Street. Tel. 288.

SHROPSHIRE

Craven Arms.—JACKSON & McCARTNEY, Chartered Auctioneers, Valuers and Estate Agents. Tel. 2185.

Shrewsbury.—HALL, WATERIDGE & OWEN, LTD., Chartered Auctioneers, Valuers and Estate Agents. Tel. 2081.

Shrewsbury and South Shropshire.—DEAKIN & COTTERILL, 8 Wyle Cop, Shrewsbury, Auctioneers, Estate Agents and Valuers. Tel. 5306 and 2313. And at Church Stretton.

Wellington.—BARBER & SON, Auctioneers, Valuers, Surveyors and Estate Agents, 1 Church Street. Tel. 27 and 444 Wellington.

Whitchurch.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 15 Watergate Street, Whitchurch. Tel. 62.

SOMERSET

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department, New Bond Street Chambers, 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Bath and District.—Estate Agents, Auctioneers and Valuers. Valuations for Probate, Mortgage, etc. HALLETT & CO., 3 Wood Street, Queen Square, Bath. Tel. 3779 and 2118.

Bath and District.—JOLLY & SON, LTD. (Est. 1825.) Estate Agents and Valuers, Funeral Directors. Probate Valuers, Chattell Auction Rooms, Milsom Street, Bath. (Tel. 3201.)

Bath, Bristol and Districts.—LOUIS POWELL & CO., Incorporated Auctioneers, Estate Agents and Valuers, 1 Princes Buildings, Bath. Tel. 2127.

Bath and the West.—CRISP'S ESTATE AGENCY (C. Cowley, F.V.I., Incorporated Surveyor and Valuer, J. L. Cowley, A.A.I., Chartered Auctioneer and Estate Agent) (Est. 1879), Abbey Chambers, York Street, Bath. Tel. 3606 and 61706.

Crewkerne—25 miles radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel 546.

Taunton and District.—C. R. MORRIS, SONS AND PEARD, Land Agents, Surveyors, Valuers, Auctioneers, 6a Hammet Street. Tel. 2546. North Curry. Tel. 319.

(*continued on p. xvii*)

of law that the defence of a fair and accurate report of judicial proceedings did not apply to a report of a counsel's or solicitor's address in court, unless what they said was warranted by the facts. There was no rule of law that a newspaper, before publishing a report of proceedings in court, was bound to verify whether what counsel or a solicitor or a witness had said was accurate. The function of a newspaper was to give a fair and accurate account of what happened in court. Judgment for the defendants with costs.

APPEARANCES: *Colin Duncan* and *D. T. Lloyd* (*Kershaw, Tudor & Co.*, Sheffield); *Helenus Milmo* and *G. F. Leslie* (*Neal, Scorah, Siddons & Co.*, Sheffield).

[Reported by J. D PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 502**

INSULTING BEHAVIOUR OCCASIONING BREACH OF PEACE

Bryan *v.* Robinson

Lord Parker, C.J., Ashworth and Salmon, JJ.

8th April, 1960

Case stated by the Chief Metropolitan Magistrate.

The defendant, who was employed as a hostess at a non-alcoholic refreshment house, stood in the doorway, leaned out, smiled, beckoned and spoke to three men who were walking in the street past the front door of the premises. The men, being annoyed by the defendant's conduct, walked across the street away from the premises. The defendant was charged with using insulting behaviour whereby a breach of the peace might have been occasioned, contrary to s. 54 (13) of the Metropolitan Police Act, 1839. She was convicted and fined 40s. She appealed.

LORD PARKER, C.J., said that the relevant words of s. 54 (13) must be read as one; there must be insulting behaviour of such a character that a breach of the peace might be occasioned. Looked at in that way, it was difficult to see how a mere leaning out, smiling and beckoning without more could amount to such insulting behaviour of a character whereby a breach of the peace might be occasioned. It was true that three men were annoyed, but clearly somebody could be annoyed by behaviour which was not insulting behaviour. The mere fact that they were annoyed carried the matter no further. Even if it could be said that a reasonable person would be likely to treat the gestures as insulting, they were certainly not of such a character whereby a breach of the peace might be occasioned. Accordingly, the appeal would be allowed.

ASHWORTH and SALMON, JJ., agreed. Appeal allowed.

APPEARANCES: *Michael Beckman* (*Joelson & Co.*); *Paul Wrightson* (*Solicitor, Metropolitan Police*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 506**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: MAINTENANCE: APPLICATION SEVERAL YEARS AFTER DECREE

Pachner *v.* Parker (formerly Pachner)

Marshall, J. 27th November, 1959

Summons adjourned into court.

The wife presented a petition for divorce in June, 1949, on which no prayer for ancillary relief was included. She was granted a decree nisi in October, 1949, which was made absolute some six weeks later. In February, 1959, she made for the first time an application for maintenance. At the time when her decree was made absolute, it was provided by r. 44 (1) of the Matrimonial Causes Rules, 1947, that "no application for maintenance shall be made later than two months after final decree except by law": that proviso, which was repeated in r. 44 of the rules of 1950 and 1957, was omitted by the amendment rules of 1958 as from 1st January, 1959, following upon the Matrimonial Causes (Property and Maintenance) Act, 1958, s. 1, which provided that the Matrimonial Causes Act, 1950, s. 19, should be amended and that an application for maintenance need no longer be "on" a decree, but might be made "either on pronouncing such a decree or at any time thereafter." Under r. 3 (3) of the Matrimonial Causes Rules, 1957, however, it was provided that a claim for maintenance must be made in the petition (or in an answer where relief was claimed), although a judge might give leave for such an application which had not been included in the petition or answer. That rule had remained unaltered. The registrar held that in view of the 1958 Act, the wife was under no obligation to obtain leave to file an application for maintenance. The husband appealed.

MARSHALL, J., said that the relevant provisions under which the wife's application must be considered were those in s. 19 of the 1950 Act, as amended in 1958, the rules to be applied were those of 1957, and that although the long delay in making her application did not of necessity bar the wife from proceeding, she could only do so with the leave of a judge sought by way of summons in accordance with r. 3 (3), proviso (ii), of the 1957 rules. Appeal allowed.

APPEARANCES: *S. Goldblatt* (*A. Oldschool & Co.*); *A. B. Ewbank* (*R. H. Marcus*, The Law Society, Divorce Department).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 486**

WILL: DEPENDENT RELATIVE REVOCATION: TWO WILLS: BOTH WILLS TREATED AS COMPOSITE DOCUMENT

In the Estate of Cocke, deceased

Lloyd-Jones, J. 10th February, 1960

Motion.

A testatrix duly executed a will appointing *C* to be her executor and, after certain bequests and legacies, leaving the residue of her estate to *C* absolutely. Later, the testatrix duly executed a second will, revoking all previous wills, again appointing *C* to be her executor and, after certain bequests and legacies, which differed from those in the first will, containing a clause which was left inchoate in such a way that, whilst it bequeathed the residue to *C* upon trust for sale, it failed to dispose of the beneficial interest in the residue. The testatrix died a widow, with no known next-of-kin.

LLOYD-JONES, J., held that the doctrine of dependent relative revocation applied, and the second will, omitting the revocation clause, and the first will, omitting those clauses which were inconsistent with the provisions of the second will, should both be admitted to probate as together constituting the true last will of the testatrix.

APPEARANCES: *R. J. A. Temple*, Q.C., and *A. J. Balcombe* (*A. Oldschool & Co.*); *C. Trevor Reeve* (*Treasury Solicitor*).

[Reported by D. R. ELLISON, Esq., Barrister-at-Law] **[2 W.L.R. 491**

Court of Criminal Appeal

EVIDENCE: CRIMINAL INTENT: CROSS-EXAMINATION AS TO PREVIOUS CHARGE RESULTING IN ACQUITTAL: WHETHER PERMISSIBLE

R. *v.* Cokar

Lord Parker, C.J., Ashworth and Salmon, JJ.

11th April, 1960

Appeal against conviction.

At the trial of the appellant for entering a dwelling-house by night with intent to steal, the appellant admitted climbing in through an open window of a dwelling-house at midnight,

where he was found shortly afterwards by the occupant asleep in a chair before the fire. The defence was that the appellant had entered merely for warmth and in order to sleep. In spite of objection by the defence, the prosecution was permitted to cross-examine the appellant as to a previous occasion when he had been charged, but acquitted, to show that he knew it was no offence to be found on private premises for an innocent purpose. The appellant was convicted and sentenced to eighteen months' imprisonment. On appeal against conviction on the ground, *inter alia*, that cross-examination as to previous proceedings resulting in an acquittal was contrary to s. 1, proviso (*f*) (i), of the Criminal Evidence Act, 1898.

LORD PARKER, C.J., said that the sole issue was whether the questions put in cross-examination should have been allowed. That depended on the true interpretation of s. 1 of the Criminal Evidence Act, 1898, and, in particular, proviso (*f*). Under that proviso there was a complete prohibition of suggesting to an accused person who had been called as a witness that he had been previously charged, whatever the result of the charge. The exceptions were threefold and the sole question in this case was whether the questions became admissible by reason of the first exception, contained in para. (i) of proviso (*f*). That was in the following terms: "Unless—(i) proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence therewith he is then charged;" and was directed to the common class of case where evidence of previous convictions was admissible to show system. The exception dealt only with the case where proof that the accused had "committed or been convicted" of another offence was admissible evidence. There was no reference in that exception to being "charged" and accordingly it seemed to the court that the prohibition against any of the matters in the first part of proviso (*f*) was only lifted when it was sought to prove that the accused had committed or been convicted of the other offence; but it was quite impossible, under exception (i), to question a man in regard to a charge in respect of which he had been acquitted. Reference had been made to observations of Lord Sankey, L.C., in *Maxwell* v. *Director of Public Prosecutions* [1935] A.C. 309. The court did not think that *Maxwell's* case was in any way a proposition for the fact that questions might be put in regard to a charge resulting in an acquittal when the sole ground for removing the prohibition in proviso (*f*) was exception (i). The court felt that the cross-examination in this case was wrongly allowed. It was clearly a matter which was bound to have influenced the jury and in all the circumstances the only possible course was to quash the conviction. The appeal would be allowed.

APPEARANCES: *Marilyn E. Wigoder* (*Registrar, Court of Criminal Appeal*); *Michael Corkrey* (*Solicitor, Metropolitan Police*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] [2 W.L.R. 836

REVIEWS

Oyez Practice Notes No. 43: Collection of Debts. By W. D. PARK, Solicitor. pp. 93. 1960. London: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The avowed object "to provide practical assistance in dealing with questions, the answers to which are not otherwise readily accessible" is well achieved in this addition to the series. It is brim full of practical common sense and the fruits of wide experience, and is a lively and refreshing presentation of a subject which tends to be regarded as dull and unrewarding, but which can increase good will, if efficiently done. It is a book to read right through, not primarily for reference on points of practice. Any clerk who works at debt collecting would undoubtedly benefit from a perusal and, if keen to improve, he will read it with ease and enjoyment. The practitioner too is likely to see the subject from a new angle in a way which will interest and stimulate him.

Official Architecture and Planning Year Book, 1960. Edited by ROBERT MCKOWN. pp. 207. 1960. London: Chantry Publications, Ltd. 15s. net.

This useful work facilitates speedy reference to the names of those executive officers responsible for architectural and town planning matters in Government departments, local authorities, statutory undertakings, and private firms. It gives not only the names of the chief officers responsible for this work but, in appropriate cases, those of their deputies and senior assistants also. The book is divided into three main parts, the first of which deals with Government departments and local authorities. Part II covers statutory organisations other than central and local government authorities—e.g., development corporations, hospital boards, etc. The third section is devoted to particulars of various organisations which may be of interest to architects and planners. The appendices give the names and addresses of L.C.C. district surveyors and quick-reference lists of county boroughs in England and Wales and large burghs in Scotland.

BOOKS RECEIVED

Stone's Justices' Manual, 1960. Ninety-second Edition. Edited by JAMES WHITESIDE, O.B.E., Solicitor, and J. P. WILSON, Solicitor. In two volumes. Volume I, pp. cccixi and (with Index) 1659. Volume II, pp. vii and (with Index) 1853. 1960. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Thin edition: £4 17s. 6d. net. Thick edition: £4 12s. 6d. net.

The Law of Contract. Fifth Edition. By G. C. CHESHIRE, D.C.L., F.B.A., of Lincoln's Inn, Barrister-at-Law, and C. H. S. FIFOOT, M.A., F.B.A., of the Middle Temple, Barrister-at-Law. pp. lxix and (with Index) 602. 1960. London: Butterworth & Co. (Publishers), Ltd. £2 10s. net.

Human Rights and International Labour Standards. By C. WILFRED JENKS, LL.D. Cantab., of Gray's Inn, Barrister-at-Law. pp. xvi and (with Index) 159. Published under the auspices of the London Institute of World Affairs. 1960. London: Stevens & Sons, Ltd.; New York: Frederick A. Praeger, Inc. £1 5s. net.

Preston and Newsom's Restrictive Covenants affecting Freehold Land. Third Edition. By G. H. NEWSOM, Q.C., of Lincoln's Inn. pp. xxix and (with Index) 278. 1960. London: Sweet & Maxwell, Ltd. £3 3s. net.

Plutocrats of Crime. A Gallery of Confidence Tricksters. By former Chief Detective Inspector PERCY SMITH of Scotland Yard. Written in association with Adrian Ball. pp. (with Index) 223. 1960. London: Frederick Muller, Ltd. 18s. net.

The Conveyancer and Property Lawyer, 1959. By EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court, and ERNEST H. SCAMELL, LL.M., Barrister-at-Law. Volume 23. pp. xviii and (with Index) 786. London: Sweet & Maxwell, Ltd. £2 10s.

COLONIAL APPOINTMENT

Mr. RALPH WINDHAM, Justice of Appeal, Court of Appeal for Eastern Africa, has been appointed Chief Justice, Tanganyika, in succession to Sir Edward Davies, who retired recently. Mr. Windham has been a Puisne Judge of the Supreme Court of Ceylon and has served as Chief Justice of Zanzibar.

BUILDING SOCIETIES

HOUSE PURCHASE AND HOUSING ACT, 1959

The Essex and Kent Permanent Building Society and the Bedford Permanent Building Society have been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959.

REGISTER OF

Auctioneers, Valuers, Surveyors, Land and Estate Agents

SOMERSET (*continued*)

Weston-super-Mare.—F. S. GARDINER, Estate Agent, 47 Oxford Street. Tel. 6312/3.

Weston-super-Mare.—LALONDE BROS. & PARHAM (Est. 1848), 23 Waterloo Street (Tel. 4500); and at Bristol.

Weston-super-Mare and District.—MASTERS & CO., F.R.I.C.S., F.A.I., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 5 High Street. Tel. 6443/4.

Yeovil and District.—PALMER, SNELL & CO., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. Tel. 25 and 1796. London Office: 130 Mount Street, W.1.

STAFFORDSHIRE

Stoke-on-Trent and North Staffs.—CHARLES BUTTERS & SONS. Established 1856. Chartered Auctioneers, Surveyors, Valuers and Estate Agents, Trinity Buildings, Hanley, Stoke-on-Trent. Tel. 2138/9. Also at Leek.

SUFFOLK

Bury St. Edmunds and East Anglia.—LACY SCOTT AND SONS, 3 Hatter Street, Bury St. Edmunds. Phone 43 and 692.

Ipswich and East Anglia.—SPURLINGS & HEMPSON (Est. 1780), Chartered Surveyors, Chartered Auctioneers, 26 Princes Street, Ipswich. Tel. 51807/8.

Ipswich and East Anglia.—WOODCOCK & SON, 16 Arcade Street, Ipswich. Tel. 54352 (2 lines). Specialists in Selling Country Property and Farms. Established 1850.

Woodbridge and East Suffolk.—ARNOTT & CALVER, Auctioneers and Valuers. Est. 1870. Tel. 179.

SURREY

Addiscombe, Shirley, Croydon.—MILLER, WILKINS AND CO., Auctioneers, Surveyors and Valuers, 191 Lower Addiscombe Road. Tel. ADDiscombe 2233/4; and 142 Wickham Road, Shirley. Tel. ADDiscombe 4021.

Ashtead and Leatherhead.—DOUGLAS & CO., F.A.L.P.A. Principal Office: 8 High Street, Leatherhead. Tel. 4136/7 (5 Offices).

Camberley (Hants and Berks Borders).—SADLER AND BAKER, Chartered Auctioneers and Estate Agents, 95 High Street. Est. 1880. Tel. 1619.

Caterham and District, Sanderstead to Purley.—J. C. O'BRIEN, Station Avenue, Caterham. Tel. 4255 and 348. Limpsfield Road, Sanderstead. Tel. 4426.

Cobham.—EWBANK & CO., in association with Mann and Co. Est. 1891. Tel. 47. Offices throughout West Surrey.

Coulsdon.—SINDEN, TOMKINS & KING, F.A.L.P.A., Valuers, Surveyors and Estate Agents, 26 Chipstead Valley Road. Tel. UPLands 0600.

Croydon.—BLAKE, SON & WILLIAMS. Est. 1798. Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 51 High Street, Croydon. CROydon 7155/6.

Croydon, Addiscombe and Wallington.—BOWDITCH & GRANT. (Est. 1881). Surveyors, Valuers, Auctioneers, 103/105 George Street, Croydon. Tel. CRO 0138/9.

Croydon and District.—JOHN P. DICKINS & SONS, Surveyors, Valuers and Estate Agents. Est. 1882. 2 and 4 George Street, Croydon. CROydon 3128/9/0.

Croydon and London.—HAROLD WILLIAMS AND PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, 80 High Street, Croydon. Tel. Croydon 1931. And at 70 Victoria Street, S.W.1. Tel. Victoria 2893.

Croydon and Epsom.—ROBT. W. FULLER, MOON AND FULLER, Chartered Surveyors, Valuers and Auctioneers, 85 High Street, Croydon (CRO 3124/6), and at Epsom (communications to Croydon Office). Established 1824.

Croydon and Sutton.—SAINT, SYMINGTON AND STEDMAN, Surveyors, Auctioneers and Valuers. 106 High Street, Croydon. Tel. CRO 2216/7. And at 6 Cheam Road, Sutton. Tel. VIG 7616/7.

Dorking.—ARNOLD & SON, Auctioneers & Surveyors, 171 High Street and branches. Est. 1855. Tel. 2201/2.

Dorking.—WHITE & SONS, 104 High Street. Agricultural and General Surveyors and Valuers. Tel. 3255.

Dorking & London.—PEARSON, COLE & SHORLAND, Auction and Estate Offices, Dorking. Tel. 3897/8. Surveyors, Valuers and Auctioneers; and at 2 Hans Road, S.W.3. Tel. Kensington 0066.

Dorking, Bookham and Effingham.—CUBITT AND WEST. Tel. Dorking 2212, Bookham 2744. Valuers, Surveyors, Estate Agents.

Dorking and Reigate.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 258/260 High Street, Dorking. Tel. 4071/2. 6 Church Street, Reigate. Tel. 4422/3. And at Leatherhead and Epsom.

Epsom and Ewell.—DOUGLAS & CO., F.A.L.P.A. Principal Office: 10 High St., Epsom. Tel. 2362/4 (5 Offices, Ewell to Leatherhead).

Epsom and Leatherhead.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 21 High Street, Epsom. Tel. 4045/6. 4 Bridge Street, Leatherhead. Tel. 4133/4. And at Reigate and Dorking.

Esher.—EWBANK & CO., in association with Mann & Co. Est. 1891. Tel. 3537/8. Offices throughout West Surrey.

Esher and District.—W. J. BELL & SON, Chartered Surveyors, Valuers, Auctioneers and Estate Agents, 51 High Street. Tel. Esher 12.

SURREY (*continued*)

Ewell.—WILTSHIRES, Estate Agents, Surveyors, Auctioneers and Valuers, 55 High Street. Tel. Ewell 1665/6.

Farnham.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5274 (2 lines).

Farnham.—CUBITT & WEST. Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

Farnham.—WHITEHEAD & WHITEHEAD, amal. HEWETT & LEE, 32 South Street. (Tel. 6277).

Godalming.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, Estate Offices. Tel. 1722 (5 lines).

Guildford.—MANN & CO., Est. 1891, 22 Epsom Road. Tel. 62911/2. Offices throughout West Surrey.

Guildford.—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

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Haslemere.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 20 High Street. Tel. 1207.

Haslemere and Hindhead.—CUBITT & WEST. Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

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Walton/Weybridge.—WARING & CO. Est. 1890. Surveyors, Estate Agents, Auctioneers and Valuers. Tel. Walton-on-Thames 24151/2.

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(*continued on p. xviii*)

SURREY (*continued*)

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SUSSEX

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Bexhill-on-Sea.—JOHN BRAY & SONS (Est. 1864), Estate Agents, Auctioneers and Valuers, 1 Devonshire Square. Tel. 14.

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Crawley.—WM. WOOD, SON & GARDNER, Surveyors and Valuers. Tel. Crawley 1.

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Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

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Wrexham, North Wales and Ellesmere, Shropshire.—WINGETT & SON, Chester Street, Wrexham. Tel. 2050.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be **brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope.** *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all*

Landlord and Tenant Act, 1954—Termination of Tenancy by Landlord

Q. We act for a landlord of premises for a fixed term of years expiring on 29th September, whose tenant has held over after the expiration of the term. It is desired to serve notice of termination under s. 25 of the Landlord and Tenant Act, 1954. As we take the view that the tenant has become a tenant from year to year, as we understand the position, the tenancy can now only be determined by our client serving a s. 25 notice to take effect on 29th September, 1960, served not later than 25th March, 1960. Would you please confirm that we are correct?

A. Unless the parties so agreed, the tenant has not, in our opinion, become a tenant from year to year. See the reasoning in *Morrison* v. *Jacobs* [1945] K.B. 577, and the coining of the expression "business statutory tenancy," discussed at 102 Sol. J. 46. The holding over was referable to the 'shall not come to end unless terminated in accordance with the provisions of this Part of this Act" of the Landlord and Tenant Act, 1954, s. 24 (1), rather than to any tacit agreement; and it follows, in our view, that as s. 25 (3) and (4) do not apply to the position, a six months' notice to terminate can so be given as to expire any time. For an illustration of a notice to terminate expiring otherwise than on a quarter-day or other rent day, see *Tennant* v. *London County Council* (1957), 121 J.P. 428, referred to in our article dealing with apportionment in such cases at 102 Sol. J. 394.

Agricultural Holding—Surrender of Part of Property Comprised in Tenancy Agreement

Q. *L* is the freehold owner of a farm, Whiteacre, let on an agricultural tenancy to *T*. There is a cottage forming part of Whiteacre sub-let by *T* to *ST*. *L* is negotiating the sale of the cottage to *ST* and will make a reduction in the rent payable by *T* in consideration of the release of the cottage. Can you call our attention to a precedent for a release or surrender of part of property comprised in a tenancy agreement? The Encyclopaedia of Forms and Precedents, vol. 15, p. 837, Form 181, gives a precedent where a lessee under a lease joins in to surrender his term, but this precedent hardly seems appropriate for a tenancy agreement and the same applied to the precedents in the Encyclopaedia, vol. 8, pp. 795 to 805.

A. We have not been able to find one precedent which both (1) relates to an agreement, and (2) deals with part only of the property agreed to be leased. We would suggest that a form can be devised from the wording of Precedent 234 on p. 800 of vol. 8 of the Encyclopaedia so far as it relates to an agreement and from the wording of Precedent 233 on the page before so far as it refers to part of the premises.

Husband and Wife—Separation—Right of Husband to Money Deposited with Bank in Wife's Name

Q. *H*, in 1952, gave to his wife, *W*, a sealed envelope containing a sum of money which was to be used as a deposit for the purchase of a house. *W* deposited the envelope with a bank in her own name. *H* and *W* have recently separated. No house was purchased and the packet remains with the bank just as it was deposited and *W* refuses to sign the bank receipt to enable *H* to withdraw the packet from the bank. To whom does the packet and its contents belong, *H* or *W*? If it belongs to *H*, can he compel the bank to pass the packet to him without obtaining *W*'s receipt? Is the case of *Blackwell* v. *Blackwell* [1943] 2 All E.R. 579, in point?

A. Where a husband purchases property or makes an investment in the name of his wife, a gift to her is presumed in the absence of evidence of an intention to the contrary (*Glaister* v. *Hewer* (1803), 8 Ves. 195: see also *Silver* v. *Silver* [1958] 1 All E.R. 523). In the present case, therefore, if it can be shown that there was an intention that the money in the envelope should remain the property of the husband, the court would hold that the money belongs to him. In *Blackwell* v. *Blackwell* [1943] 2 All E.R. 579, there was sufficient evidence that "this money was still the property of the husband" (per Scott, L.J.): cf. *Mews* v. *Mews* (1852), 15 Beav. 529. If it is established that the contents of the envelope belong to the husband, in our view he could not compel the bank to pass the packet to him without obtaining his wife's receipt (see *Atkinson* v. *Bradford Third Equitable Benefit Building Society* (1890), 25 Q.B.D. 377, and *Bagley* v. *Winsome & National Provincial Bank, Ltd.* [1952] 2 Q.B. 236).

Estate Duty—Marriage Settlement—Provision in Favour of Settlor's Other Children and Their Issue

Q. If *A* makes a settlement in consideration of his daughter's marriage, can he include in this settlement a discretionary trust in favour of his other children and their issue? He would thus on the consideration of his daughter's marriage obtain exemption of his estate from duty, if he dies within five years.

A. There is no reason why a settlor should not include such a provision in a marriage settlement if he so desires. But the settled property will not be exempted from estate duty on his death within five years. The exemption applies to gifts in consideration of marriage and a gift in consideration of marriage can only extend to a gift to such as are within the marriage consideration, i.e., spouses, children and remoter issue of the marriage.

Lease—Term Commencing before Date of Document Creating it

Q. On 1st July, 1958, *A* purchased a plot of freehold land. Is there anything to prevent *A* granting a lease of the land for 999 years for a term commencing on 1st January, 1958? On 1st July, 1958, *A* takes a lease of a plot of land for 999 years from 1st July, 1958. Is there anything to prevent *A* granting an underlease of part of the land for a term of 990 years commencing on 1st January, 1958?

A. There is, in our opinion, nothing to prevent either grant from being effective. The practice of expressing the term as running from a date anterior to the date of the document which creates the term, and the effect of such a document, were approved and explained by Clauson, J., in *Cadogan (Earl)* v. *Guinness* [1936] Ch. 515, at pp. 517–8; and we would also refer to *Bird* v. *Baker* (1858), 1 El. & El. 12, and to *Cooper* v. *Robinson* (1842), 10 M. & W. 694. In the case of the proposed lease, it may be that regard should be had to the possibility of enlargement into a fee simple under the Law of Property Act, 1925, s. 153.

Company Law—Private Company—Restriction on Transfer of Shares

Q. Regulation 3 of Pt. II of Table A in Sched. I to the Companies Act, 1948, provides that the directors may in their absolute discretion and without assigning any reason therefor decline to register any transfer of any share whether or not it is a fully paid share. If reg. 3 were altered by the articles of a private company to provide that the directors should not refuse unreasonably to register any transfer, would such a modification to the restriction of the right to transfer the company's shares cause the company to cease to be a private company?

A. The Companies Act, 1948, does not define the degree of restriction which a private company must place on transfer of its shares. In our opinion the suggested modification of reg. 3 would not endanger private company status, because there are bound to be cases where the directors could reasonably refuse registration, e.g., if the proposed transferee were a competitor of the company's business, or if the transfer would increase the number of members beyond fifty. This is not to say that we consider such a modification generally advisable. It could lead to disputes as to whether the directors had unreasonably withheld consent, and whether they were bound to give reasons. It is normally better to give directors an absolute discretion, or, if this is not appropriate, to specify the grounds on which they can refuse.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"

Land Registration

Sir,—A great many people, in particular senior officials of the Land Registry, attempt to convince one of the ease and facility of Land Registry procedure. I personally have never been convinced by their arguments, and I would like to cite one illustration of the inconvenient and cumbersome nature of the Registry's procedure.

If one obtains one's official search immediately prior to completion—and it is not always easy to arrange this—it is necessary to apply for the registration of the title within fourteen days after the date of the search. Before documents can be submitted for registration they have to be duly stamped—a little more bureaucracy—and if one sends the documents to Bush House for stamping, as my office does, they are frequently more than fourteen days in being returned. This does not matter in unregistered conveyancing where priority is determined by the date in the conveyance and not by the date of registration, but it would seem that if one is dealing in registered land—that peculiarly facile and simple procedure!—one has to employ outside staff to make a personal attendance at the local stamp office, if one is lucky enough to be near one, or in the alternative, employ London agents, at some expense, to attend personally to have one's stamping done. It does seem that in this case one is ground by the upper and nether mill-stones, who in each case are Government Departments. I can only personally express the hope that registered land is never introduced to any considerable extent.

G. W. QUANCE.

West Bromwich.

Publicity for Solicitors

Sir,—It is not surprising that the vulgarity of modern advertising causes the lawyer to shun almost all forms of publicity, but do you not feel considerable respect for the draftsman of the enclosed business card [*set out below*]? One feels that a man who displayed such courtesy and modest manners deserved every client which his solicitations brought him. His place of business certainly sounds more attractive than many legal offices.

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Ship Street, Wisbech, ——— Decr. 1823.

BYSH, WISBECH.

This card was given me by Mr. Harold Bambridge, a former managing clerk at these offices and now aged seventy-eight. It was passed to him by his father who held the same position.

RICHARD BOWSER
(of Messrs. Mossop & Bowser).

Wisbech.

CASES REPORTED IN VOL. 104

15th April to 13th May, 1960

For cases reported up to and including 8th April, see p. 294, *ante*

REPAYMENT OF POST-WAR CREDITS

The Post-War Credit (Income Tax) Amendment Regulations, 1960 (S.I. 1960 No. 769), come into operation on 16th May. The draft regulations were set out at p. 314, *ante*.

Societies

The BIRMINGHAM LAW SOCIETY held its 141st annual general meeting on 27th April, when the following were elected for the ensuing year: Mr. R. S. King-Farlow, president; Mr. W. H. Tilley, vice-president; and Mr. David C. Stevens and Mr. M. P. C. Hayes, joint hon. secretaries and treasurers.

The WEST LONDON LAW SOCIETY's general meeting to be held on 25th May (at 6.15 p.m.) will take place at the Windsor Hotel, 57 Lancaster Gate, W.2, and not as previously announced.

The MEDICO-LEGAL SOCIETY held its annual dinner at the Royal College of Surgeons on 4th May. The president, Mr. Henry Elam, was in the chair and the speakers included the Rt. Hon. Lord Evershed (Master of the Rolls), Sir Wilfred Fish (president of the General Dental Council), Dr. D. Stafford Clark and the Rt. Hon. Patricia Hornsby-Smith, M.P. (Parliamentary Secretary, Ministry of Pensions and National Insurance).

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

Classified Advertisements

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
3s. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
12s. for 30 words. Additional lines **2s.** Box Registration Fee **1s. 6d.** extra

Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to
THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

METROPOLITAN BOROUGH OF CAMBERWELL

ASSISTANT SOLICITOR

Applications invited for this appointment within salary range of £1,110 to £1,420 inclusive (Grades A.P.T. IV or V of the National Scales). Commencing salary according to experience. The duties of the post will be mainly concerned with acquisition of property by negotiation or under Compulsory Purchase Orders and it is desirable that applicants should have experience of local government procedure in this connection. Conveyancing experience is also essential. Application form from Town Clerk, Town Hall, S.E.5. Closing date 28th May.

COUNTY BOROUGH OF SWANSEA

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the post of Assistant Solicitor. Salary or special grade (£835–£1,165). National condition of service and local government superannuation act apply. Previous experience in a local government office is not essential. Applications, stating age, date of admission and experience, with names of two referees, to be sent to the undersigned not later than Wednesday, the 25th day of May, 1960.

T. B. BOWEN,
Town Clerk.

Guildhall,
Swansea.
5th May, 1960.

THE LAW SOCIETY'S FINAL EXAMINATION

A further vacancy occurs for an Examiner in Head B5 at this Examination, namely, Practice of the High Court and of the County Court, including Practice in Bankruptcy and in the Court of Protection.

Applications for appointment are invited from members of the Society and must be received by the Secretary at The Law Society's Hall, Chancery Lane, W.C.2, not later than the 17th June, 1960. Applicants should provide full particulars of their qualifications. Those who are required to attend for interview will be paid their reasonable travelling and subsistence expenses.

CITY AND COUNTY OF KINGSTON UPON HULL

ASSISTANT SOLICITOR

Applications are invited for this appointment. Salary within the special scale for Assistant Solicitors (£835–£1,165) or Grades A.P.T. IV–V (£1,065–£1,375) according to qualifications and experience. Previous experience of local government work not essential but applicant should have a good knowledge of conveyancing.

Further particulars and form of application can be obtained from the undersigned to whom all applications should be sent not later than Saturday, the 21st May, 1960.

J. HAYDON W. GLEN,
Town Clerk.

Guildhall,
Kingston upon Hull,
April, 1960.

COUNTY OF ESSEX

Applications invited for established post of SENIOR ASSISTANT SOLICITOR in Office of County Clerk; previous local government experience essential; duties will be concerned primarily with the Health, Welfare and Children's Committees. Salary according to qualifications and experience but not exceeding £1,885 a year. Post superannuable. Canvassing forbidden. Detailed applications, naming three referees, to County Clerk, County Hall, Chelmsford, as soon as possible.

WEST LONDON

ASSISTANT SOLICITOR required. Salary range £895–£1,265 p.a., commencing according to age and experience. Write full details.—Box 6656, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BOROUGH OF HORNSEY

ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary in accordance with A.P.T. Grade IV/V (£1,065 rising to £1,375), plus London Weighting.

Applications, stating age, qualifications and experience, together with the names of two referees, must reach the undersigned not later than the 17th May, 1960.

Applicants must disclose in writing whether, to their knowledge, they are related to any member or officer of the Council. Canvassing will disqualify.

W. B. MURGATROYD,
Town Clerk.

Town Hall,
Crouch End, N.8.

BOROUGH OF SUTTON COLDFIELD

ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary within the Special Grade (£835–£1,165) according to experience.

Local Government experience is not essential and applications will be considered from newly qualified Solicitors. Housing accommodation may be provided for the successful applicant.

Applications, stating age, experience and qualifications and the names of two referees must be received by me not later than noon on the 21st May, 1960.

J. P. HOLDEN,
Town Clerk.

Council House,
Sutton Coldfield.

CITY OF LIVERPOOL

TOWN CLERK'S DEPARTMENT

Applications are invited for the appointment of ASSISTANT SOLICITOR (Salary range £835—£1,165 p.a., N.J.C. Scale). Duties comprise general legal work including advocacy.

Applications from persons awaiting admission as Solicitors will be considered.

Application form, returnable by 30th May, 1960, from the undersigned.

The appointment is superannuable and subject to the Standing Orders of the city council. Canvassing disqualifies.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2. (J 6183)

MIDDLESEX COUNTY COUNCIL

ASSISTANT CONVEYANCING CLERK required by Middlesex County Council. APT. I (£610–£765) and London Weighting max. £30 p.a.

Commencing salary related to experience. Good prospects. Established. Pensionable. 5-day week. Prescribed conditions. Applications to The Clerk of the County Council (ref. C), Middlesex Guildhall, Westminster, S.W.1, by 28th May, 1960. (Quote C. 510 S. J.).

METROPOLITAN BOROUGH OF CAMBERWELL

LAW CLERK

Salary £795–£910 inclusive (A.P.T. II of the National Scales). Conveyancing experience essential but previous local government experience not necessary. Application form from Town Clerk, Town Hall, S.E.5. Closing date Saturday, 21st May, 1960.

BOROUGH OF ENFIELD

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the post of:

ASSISTANT SOLICITOR—within the APT. Division, Grade IV, including London Weighting (£1,095–£1,250), according to experience.

Particulars of the appointment and Form of Application may be obtained from and should be returned to the undersigned on or before noon on Monday, 23rd May, 1960, in envelopes endorsed "ASSISTANT SOLICITOR."

CYRIL E. C. R. PLATTEN,
Town Clerk.

Public Offices,
Gentleman's Row,
Enfield,
Middlesex.

APPOINTMENTS VACANT

NORTHERN RHODESIA.—Assistant Solicitor required, mainly conveyancing and company work but possibly occasional advocacy. Would suit recently admitted man. Salary not less than £1,500 p.a. or more according to experience. Interview with senior partner in London end of May.—Please write giving full particulars to Conway, 111 Moorgate, E.C.2.

SOLICITOR required as assistant to solicitor of large Public Company concerned with building and civil engineering. A recently admitted Solicitor having experience of Estate Conveyancing would be preferred. No applicant over the age of 30 will be considered. Contributory Pension Scheme. Salary £800–£900 depending upon ability.—Apply in writing giving full details of age, experience and qualifications to Box 6636, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR.—Advocate with some experience of prosecuting in Magistrates' Courts required by a well-known London firm for advocacy and general assistance. Court work covers London and Home Counties. Salary by arrangement.—Box 6637, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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Classified Advertisements

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APPOINTMENTS VACANT—*continued*

ASSISTANT Solicitor required urgently by busy firm to assist in Conveyancing and general practice consequent on sudden loss of partner.—Box 6638, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MANCHESTER.—Male Claims Correspondence Clerk, age 25 to 45, with some knowledge of Common Law with reference to Employers and Public Liability, required by Insurance Company. Salary £500 to £850 according to age and experience. Financial assistance in taking C.I.I. exams. and annual bonus for each part. Non-contributory Pension Scheme. Existing holiday arrangements honoured.—Box 6639, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS have vacancy for an Assistant Solicitor with conveyancing experience and for one unadmitted Clerk with general legal experience. Good salaries available.—Apply A. D. Abrahamson & Co., 18 The Albany, Old Hall Street, Liverpool, 3.

SOLICITORS in South London require experienced clerk, aged 25/35, as assistant to litigation Manager; knowledge of Divorce and County Court work, Accident Claims, etc., and able to interview Clients. Good salary paid according to age and experience.—Box 6640, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

TRUST accounts clerk, fully experienced in administering trusts and keeping standard trust accounts required by Bournemouth Solicitors for minimum of three years to train novice. Retiring bank trust officer or solicitors clerk would suit, could be part-time or whole-time.—Box 6641, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM.—Experienced Solicitor required immediately. Mainly conveyancing work. Salary according to experience and ability. Reply stating age, experience and salary required.—Lane Clutterbuck & Co., 125 Edmund Street, Birmingham.

HOLBORN.—Long-established firm offers excellent experience to Assistant Solicitor. —Tel. HOLborn 3628 or write particulars to ELLIS AND FAIRBAIRN, 4 Southampton Row, W.C.1.

CITY Solicitors with medium-sized practice requires widely experienced Conveyancing assistant. High salary and definite prospects. —Apply Box 6642, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BEDFORDSHIRE.—Town Solicitors require Conveyancing assistant to take full charge of branch office. High salary and prospects.—Box 6643, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors (small busy firm) require Conveyancing Managing Clerk aged 30–40 years. Congenial and progressive post with partnership prospects for qualified man. Salary of secondary importance for first class man.—Fullest details please to Box 6488, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTH CORNWALL.—Admitted or Unadmitted Assistant required. Conveyancing and Probate with opportunity for advocacy if desired. Salary by arrangement. Would suit newly qualified solicitor. Coastal resort. Golf and sailing available.—Box 6644, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MID-WALES Spa. Vacancy for Managing Clerk, also retired Solicitor or locum tenens. —Box 6478, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LINCOLN.—Assistant solicitor required in busy practice, for varied work including Common Law and such advocacy as the firm undertakes. Suit man admitted, say, 2–4 years, seeking to widen experience. Salary according to experience and ability, but in any case not less than £1,000.—Box 6650, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SMALL but rapidly expanding firm, South-West London Solicitors, urgently require the services of an energetic conveyancing and probate man who will in these two branches be "Second in command" to the principal of the firm. A very generous salary can be offered to a man with energy and ability. Prospects are excellent. Applicant should furnish brief details of qualifications, experience and salary required when writing.—Box 6651, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

S.E. LONDON solicitors require conveyancing and probate clerk with good knowledge of land registry procedure: experience of county court work preferred: pension scheme: write stating age: education: experience: salary required.—Box 6547, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITORS (Temple) offer exceptionally good opportunity to competent unadmitted managing clerk (primarily conveyancing), with excellent salary and conditions.—Box 6655, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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The post, which will be located at Sandwich, calls for a Solicitor or Barrister Admitted or Called in England, who has had at least two years' experience since qualifying either in a Solicitor's office or in Chambers. Preferred age range 26-30.

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Applications are invited: They should be addressed to—

The Chief Personnel Officer,
Sandwich, Kent.

AMBITIOUS Solicitor required for Cardiff, primarily for advocacy. Commencing salary £1,500 to £1,750. Car provided; assistance with housing if necessary; good partnership prospects.—Box 6616, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST MIDDLESEX.—Young Conveyancer required with or without supervision by old-establish firm. Salary up to £1,000 according to experience.—Details to Box 6619, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy. —Box 6396, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

GRIMSBY Solicitors require a conveyancing and probate assistant (admitted or unadmitted); good salary to right man.—Write with full details of previous experience and salary required to Box No. 6622, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by large City firm to work personally with partners on important matters for commercial and private clients. Salary around £1,500 per annum according to experience and qualifications, good prospects. —Write with full details about education, articles and experience to Box No. 6623, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR recently or soon to be admitted wanted as Assistant in large well-known City firm. Work varied including commercial, company, estate duty and tax. Salary about £800 p.a., pension scheme, lunch tickets.—Write with experience to Box No. 6624, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

HAMMERSMITH Solicitors require Cashier/Accounts Clerk. No Sats. Pension Scheme. Holiday. Small unfurnished flat available if required. Salary by arrangement. —Apply giving full details to Box No. 6625, Solicitors' Journal, Oyez House, Breams Buildings, E.C.4.

OLD-ESTABLISHED North London firm urgently require Assistant Solicitor or experienced Clerk to assist in busy Conveyancing practice. Salary in accordance with experience. Permanent position for suitable applicant.—Box No. 6626, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

COVENTRY—Solicitors with expanding practice require an Assistant Solicitor to take over the litigation department. Salary up to £2,000, dependant upon experience and ability. Must be a capable and efficient advocate.—Claude M. Payne & Co., Halifax Chambers, High Street, Coventry.

A WEST SURREY old-established firm carrying on general practice require recently qualified Solicitor. Salary £850 to £1,200 according to experience. Write with full details.—Box 6599, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required to take over and develop litigation in busy conveyancing practice Norfolk coast; good prospects to capable and efficient advocate. Please write stating age, experience and salary required.—Box 6603, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WESTMINSTER solicitors require assistant solicitor with two years experience or less for Litigation work. Salary according to experience.—Box 6615, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LEADING firm of Birmingham solicitors are prepared (subject to trial) to admit to profit-sharing partnership a litigation partner. Applications invited only from persons of first-class ability, experience, integrity and connections.—Box 6611, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required for London suburban conveyancing practice—must be hard worker and capable of acting independently—good prospects of partnership.—Box 6354, Solicitors' Journal, Oyez House, Breams Buildings, E.C.4.

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Classified Advertisements

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APPOINTMENTS VACANT—*continued*

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CHIEF ASSISTANT SOLICITOR

Applications are invited from Solicitors, aged 28 to 36 years, for the post of Chief Assistant to the Solicitor of a national Building Society. The salary will be progressive, commencing at £1,250 to £1,750 per annum, according to age and experience. Applicants must be sound conveyancers, able to take charge of a considerable volume of work with little supervision, and willing to accept responsibility. This is an excellent opportunity for an ambitious man.

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Applications, endorsed "Chief Assistant," giving particulars of age, education and experience, should reach me not later than Tuesday, 17th May.

K. F. SOLLOWAY,
Welford House,
Welford Place,
Leicester.

CITY solicitors require experienced conveyancing clerk; hours 9.30—5, no Saturdays; pension scheme. Please state age, experience and salary required.—Box 6319, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCER (solicitor or unadmitted managing clerk) required by Lincoln's Inn firm for their London south-west suburban branch; good prospects for advancement; commencing salary £1,250; please state age and experience.—Box 6355, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MATLOCK.—Assistant solicitor preferably 28–35 to take charge of Branch office under slight supervision. General country practice—mainly Conveyancing and Probate. Prospects of partnership after trial period. Salary dependent on experience.—Box 6584, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

EXPERIENCED legal copy typist, widow, Law Stationer trained, wishes to build up connection for work at home. Quick service, moderate charges, good work guaranteed. References if desired. Enquiries welcomed. Work earnestly desired.—Box 6647 Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CLERK, age 23, four years' experience of Litigation, general outdoor work and debt collecting seeks position in debt collecting department where hard work is really appreciated and opportunity for advancement given in return.—Box 6652, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED young rider wishes to change horses in mid-field. Former trade association executive. Seeks mount in London or Oxford solicitors' stables where he can be introduced to fences of litigation, probate and conveyancing.—Box 6646, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

TAXATION: Retiring Revenue official seeks employment London, S.W. or Central. Available 1st July.—Box 6645, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

REQUIRED by manager for his son aged 16 living near High Barnet Underground Station a junior clerkship preferably with small general practice.—Box 6648, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk (31), wide experience (Contract, Hire-Purchase, Accident, Divorce, etc.), seeks permanent position in country or seaside town. Salary £1,000.—Box 6649, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR (39), public school, 10 years' experience, conveyancing, litigation, trust, probate, company law, seeks change with prospects, full partnership, capital available.—Box 6653, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION and Probate Manager. Experienced all divisions. Some conveyancing. Used to working no supervision. Reading, Berks or London. Commerce or private practice. Would manage branch office. Salary £1,125.—Box 6654, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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★ Classified Advertisements ★

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FINANCIAL—*continued*

LARGE funds are available for transferring periodic payments from wills, trusts, bequests, etc., into cash. Building finance at 6 per cent. interest. Our funds are unaffected by the credit squeeze.—Box 6634, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

A SPECIAL car hire-purchase agreement has now been designed affording special rates to members of the legal profession,—write for particulars to The Basinghall Finance Co., Ltd., 17 Basinghall Street, London, E.C.2.

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